LOS/PCN/SCN.4/WP.16/Add.4
10 December 1993

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PREPARATORY COMMISSION FOR THE INTERNATIONAL SEABED AUTHORITY AND FOR THE INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA
Special Commission 4

PROVISIONAL REPORT OF SPECIAL COMMISSION 4

(DRAFT REPORT OF THE PREPARATORY COMMISSION UNDER PARAGRAPH 10 OF RESOLUTION I CONTAINING RECOMMENDATIONS FOR SUBMISSION TO THE MEETING OF STATES PARTIES TO BE CONVENED IN ACCORDANCE WITH ANNEX VI, ARTICLE 4, OF THE CONVENTION, REGARDING PRACTICAL ARRANGEMENTS FOR THE ESTABLISHMENT OF THE INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA)

Addendum*

RELATIONSHIP ARRANGEMENTS BETWEEN THE UNITED NATIONS AND THE INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA

(Final Draft Agreement on Cooperation and Relationships between the United Nations and the International Tribunal for the Law of the Sea)

(Working paper by the Secretariat)

Explanatory Note

The draft Agreement on Cooperation and Relationships between the United Nations and the International Tribunal for the Law of the Sea (LOS/PCN/SCN.4/WP.9), as well as the arrangements regarding the United Nations common system of salaries and benefits and participation in the United Nations Joint Staff Pension Fund (LOS/PCN/SCN.4/WP.9/Add.1) were reviewed by Special Commission 4 during the eighth session (5-30 March 1990) and the summer meeting of the Preparatory Commission (13-31 August 1990). The discussions are reflected in the Chairman's summary (LOS/PCN/SCN.4/L.15) and form the basis for the present revised draft.

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* This working paper also constitutes addendum 4 to document LOS/PCN/SCN.4/WP.15, which was not previously issued as a separate document.

CONTENTS

		Page
Preamble		3
Article 1.	Legal relationship and mutual recognition	3
Article 2.	Cooperation and coordination	4
Article 3.	Relations with the International Court of Justice	4
Article 4.	Relations with the Security Council	4
Article 5.	Reciprocal representation	5
Article 6.	Exchange of information and documents	5
Article 7.	Reports to the United Nations	6
Article 8.	Personnel arrangements	6
Article 9.	Agenda items	7
Article 10.	Administrative cooperation	7
Article 11.	Laissez-passer	8
Article 12.	Budgetary and financial matters	8
Article 13.	Financing of special services	9
Article 14.	Liaison	9
Article 15.	Implementation of the Agreement	9
Article 16.	Revision and review	10
Article 17.	Amendments	10
Article 18.	Entry into force	10

FINAL DRAFT AGREEMENT ON COOPERATION AND RELATIONSHIPS BETWEEN THE UNITED NATIONS AND THE INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA

Preamble

The United Nations and the International Tribunal for the Law of the Sea,

Bearing in mind that the General Assembly of the United Nations in its resolution 3067 (XXVIII) of 16 November 1973 decided, inter alia, to convene the Third United Nations Conference on the Law of the Sea, which adopted the 1982 United Nations Convention on the Law of the Sea, hereinafter referred to as the Convention, which in accordance with article 287, paragraph 1 (a), and annex VI thereof established the International Tribunal for the Law of the Sea with a central role in the settlement of disputes thereunder,

Noting the role of the United Nations in the peaceful settlement of international disputes and also the responsibilities entrusted to the Secretary-General under article 319 and other provisions of the Convention,

Noting further the functional interrelationships established under the Convention between the United Nations, its principal organs and the competent specialized agencies, and on the other hand the International Tribunal for the Law of the Sea,

Desiring to make provision for an effective system of relationship to facilitate the discharge of the respective responsibilities of the United Nations and the International Tribunal for the Law of the Sea, particularly in the field of the law of the sea,

Taking into account, for this purpose, the provisions of the Charter of the United Nations, the Convention and the Statute of the International Tribunal for the Law of the Sea, annex VI thereto,

Have agreed as follows:

Article 1

Legal relationship and mutual recognition

1. The United Nations and the International Tribunal for the Law of the Sea (hereinafter referred to as the International Tribunal) respect each other's status and mandate, and on the basis of this Agreement and in conformity with the Convention and the Statute, the International Tribunal, as an independent judicial body, hereby establishes working relations with the United Nations.

2. The International Tribunal recognizes the responsibilities of the United Nations in accordance with the Charter in the fields of international peace and security and the resolution of international disputes.

Article 2 (3)*

Cooperation and coordination

1. The United Nations and the International Tribunal, with a view to facilitating the effective attainment of their objectives and the coordination of their activities, will:

(a) Consult each other when appropriate and will cooperate on matters of mutual concern; and

(b) Pursue initiatives to avoid overlapping and duplication of activities as far as possible.

Article 3 (4)

Relations with the International Court of Justice

1. The International Tribunal agrees to furnish any information which may be requested by the International Court of Justice pursuant to Article 34, paragraph 2, of the Statute of the Court and the United Nations agrees to furnish any information requested of it or of the International Court of Justice by the International Tribunal pursuant to article 79 of the Rules of the Tribunal.**

2. The prompt and regular exchange of information concerning applications submitted in accordance with article 292 of the Convention shall be assured between the International Court of Justice and the International Tribunal.

Article 4 (5)

Relations with the Security Council

1. The International Tribunal and the Security Council agree, when appropriate, to communicate information which may be relevant to their activities and to facilitate the performance of their functions.

2. In providing for such cooperation due regard shall be paid to the provisions of article 298, paragraph 1 (c), of the Convention.

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* The numbers in parentheses indicate the place of the article in document WP.9.

** The reference is to the Draft Rules of the Tribunal contained in document LOS/PCN/SCN.4/WP.2/Rev.1.

Article 5 (6)

Reciprocal representation

1. The Secretary-General of the United Nations or his representative may be invited to attend and to participate as appropriate, without a vote, in meetings of the Members of the International Tribunal and of its committees on matters of common interest, other than those related to the judicial functions of the International Tribunal.

2. The President of the International Tribunal or his representative may be invited to attend and to participate as appropriate, without a vote, in plenary meetings of the organs of the United Nations, and their subsidiary bodies when matters of interest to the International Tribunal are under discussion.

3. Written statements may be presented by the United Nations for distribution by the Registry to the members of the International Tribunal. Written statements may be presented to the United Nations for distribution by the Secretariat to all members of the appropriate organs of the United Nations.

Article 6 (7)

Exchange of information and documents

1. The United Nations and the International Tribunal shall, to the fullest extent practicable, and subject to paragraph 2, arrange for the regular exchange of current information and publications of mutual interest.

2. Nothing in this Agreement shall be construed to require either the United Nations or the International Tribunal to furnish any information the furnishing of which would, in its judgement, constitute a violation of the confidentiality of confidential information and proprietary material.

3. The International Tribunal shall:

(a) Periodically transmit to the United Nations information concerning developments relating to the Convention, including information regarding the jurisprudence of the International Tribunal; and

(b) Transmit to the United Nations, as appropriate, information and documentation relating to the pleadings, oral proceedings, judgements, orders, and other communications and documentation relating to applications in accordance with articles 290 and 292 of the Convention, including information concerning applications submitted to the International Tribunal for the purposes of the International Court of Justice, as referred to in article 3, paragraph 2, of this Agreement.

4. The United Nations shall:

(a) Periodically transmit to the International Tribunal information concerning developments relating to the Convention; and

(b) Transmit to the International Tribunal information and communications received by it pursuant to the designation of the Secretary-General as the depositary of the Convention;

(c) Transmit to the International Tribunal information concerning applications submitted to the International Court of Justice under article 292 of the Convention.

5. The United Nations and the International Tribunal agree to strive for maximum cooperation, with a view to eliminating all undesirable duplication between them and promoting the most efficient use of their technical personnel in the collection, analysis, publication and dissemination of statistical information. They agree to combine their efforts to secure the greatest possible usefulness and utilization of statistical information and to minimize the burdens placed upon national Governments and other organizations from which such information may be collected.

Article 7 (8)

Reports to the United Nations

The International Tribunal shall, when appropriate, keep the United Nations informed of its activities by submitting special reports:

(a) To regular sessions of the General Assembly;

(b) To the Security Council, and notify the Council whenever, in connection with the activities of the International Tribunal, questions within the competence of the Security Council, in particular relating to the application of article 298, paragraph 1 (c), arise.

Article 8 (9)

Personnel arrangements*

1. The United Nations and the International Tribunal agree to develop as far as is practicable common personnel standards, methods and arrangements designed to avoid serious discrepancies in terms and conditions of employment, to avoid competition in recruitment of personnel, and to facilitate any mutually desirable interchange of personnel in order to obtain the maximum benefit from their services.

2. The United Nations and the International Tribunal agree to cooperate to the fullest extent possible in achieving these ends, and in particular they agree:

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* See also LOS/PCN/SCN.4/WP.9/Add.1.

(a) To cooperate with the International Civil Service Commission, established for the purpose of contributing to the improvement of recruitment and related phases of personnel administration in all of the international organizations;

(b) To consult together concerning other matters relating to the employment of their officers and staff, including conditions of service, duration of appointments, classification, salary scales and allowances, retirement and pension rights and staff regulations and rules, with a view to securing as much uniformity in these matters as shall be found practicable;

(c) To cooperate in the interchange of personnel, when desirable, on a temporary or permanent basis, making due provision for the retention of seniority and pension rights;

(d) To cooperate in the establishment and operation of suitable machinery for the settlement of disputes arising in connection with the employment of personnel and related matters.

3. Accordingly, the United Nations and the International Tribunal undertake to consult together, from time to time concerning these matters, particularly the most efficient and harmonized use of facilities, staff and services and appropriate methods of avoiding the establishment and operation of competitive or overlapping facilities and services with a view to securing as much uniformity in these matters as possible.

4. The United Nations and the International Tribunal shall consult to establish the most equitable manner in which any special services or assistance furnished, on request, by the International Tribunal to the United Nations or by the United Nations to the International Tribunal shall be financed.

Article 9 (10)

Agenda items

The International Tribunal may propose items for consideration by the United Nations. In such cases, the International Tribunal shall notify the Secretary-General of the United Nations of the item or items concerned and the Secretary-General, in accordance with his authority, shall bring such item or items to the attention of the General Assembly or such other organ, as appropriate.

Article 10 (13)

Administrative cooperation

The United Nations and the International Tribunal recognize the desirability of cooperation in administrative matters of mutual interest. They shall consult to explore the possibility of continuing or establishing common facilities or services in specific areas, including the possibility of one organization providing such facilities or services to one or several other

organizations, and establish the most equitable manner in which such facilities or services shall be financed.

Article 11 (14)

Laissez-passer

Members of the International Tribunal, the Registrar and other officials of the International Tribunal and the Registry shall be entitled to use the laissez-passer of the United Nations, in accordance with such terms as may be concluded between the Secretary-General of the United Nations and the Registrar of the International Tribunal, and such special arrangements as may be approved in the context of the Convention on the Privileges and Immunities of the United Nations.

Article 12 (15)

Budgetary and financial matters

1. The International Tribunal recognizes the desirability of establishing close budgetary and financial relationships with the United Nations in order that the administrative operations of the United Nations and the International Tribunal shall be carried out in the most efficient and economical manner possible, and that the maximum measure of coordination and uniformity with respect to these operations shall be secured.

2. The United Nations and the International Tribunal agree to cooperate to the fullest extent possible in achieving these ends.

3. The International Tribunal agrees to conform, as far as may be practicable and appropriate, to standard practices and forms recommended by the United Nations.

4. The following arrangements shall govern budgetary and financial relationships between the United Nations and the International Tribunal:

(a) The Registrar of the International Tribunal shall consult with the Secretary-General of the United Nations with a view to achieving consistency in the presentation of the budget of the International Tribunal with that of the United Nations;

(b) The International Tribunal, when it deems necessary, may transmit its draft budget or budgetary estimates to the United Nations and request recommendations thereon;

(c) At the request of the International Tribunal, the United Nations may undertake the collection of contributions from States Parties to the Convention which are also Members of the United Nations in accordance with such arrangements as may be defined by a later agreement between the United Nations and the International Tribunal;

(d) The United Nations may, upon the request of the International Tribunal, provide advice on financial and fiscal questions of interest to the International Tribunal with a view to the provision of common services and the securing of uniformity in such matters.

Article 13 (16)

Financing of special services

1. In the event of either the International Tribunal or the United Nations being faced with the necessity of incurring substantial extra expense as a result of any request which the other party to the Agreement may make for special reports, studies or assistance in accordance with the provisions of this Agreement, consultations shall take place with a view to determining the most equitable manner in which such expense shall be borne.

2. Consultation between the United Nations and the International Tribunal shall similarly take place with a view to making such arrangements as may be found equitable for covering the costs of central administrative, technical or fiscal services or facilities or other special assistance provided by the United Nations.

Article 14 (17)

Liaison

1. The United Nations and the International Tribunal agree to the foregoing provisions in the belief that they will contribute to the maintenance of effective liaison between them. They affirm their intention of taking in agreement whatever measures may be necessary to this end.

2. The liaison arrangements provided for in this Agreement shall apply, as far as is appropriate, to the relations between the International Tribunal and the United Nations, including its offices away from Headquarters and regional offices.

Article 15 (18)

Implementation of the Agreement

The Secretary-General and the Registrar may enter into such supplementary arrangements for the implementation of this Agreement as may be found desirable in the light of the operating experience of the United Nations and the International Tribunal.

Article 16 (19)

Revision and review

This Agreement shall be subject to revision by agreement between the United Nations and the International Tribunal and shall be reviewed not later than three years after the Agreement has come into force.

Article 17

Amendments

This Agreement may be amended by agreement between the United Nations and the International Tribunal. Any such amendment agreed upon shall enter into force on its approval by the General Assembly of the United Nations and by the Meeting of States Parties to the Convention.

Article 18 (20)

Entry into force

This Agreement shall come into force on its approval by the General Assembly of the United Nations and the Meeting of States Parties to the Convention.

LOS/PCN/SCN.4/WP.16/Add.5
10 December 1993

ORIGINAL: ENGLISH

PREPARATORY COMMISSION FOR THE INTERNATIONAL SEABED AUTHORITY AND FOR THE INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA
Special Commission 4

PROVISIONAL REPORT OF SPECIAL COMMISSION 4

(DRAFT REPORT OF THE PREPARATORY COMMISSION UNDER PARAGRAPH 10 OF RESOLUTION I CONTAINING RECOMMENDATIONS FOR SUBMISSION TO THE MEETING OF STATES PARTIES TO BE CONVENED IN ACCORDANCE WITH ANNEX VI, ARTICLE 4, OF THE CONVENTION REGARDING PRACTICAL ARRANGEMENTS FOR THE ESTABLISHMENT OF THE INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA)

Addendum*

REPORT ON PRINCIPLES GOVERNING A RELATIONSHIP AGREEMENT BETWEEN THE INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA AND THE INTERNATIONAL SEABED AUTHORITY

(LOS/PCN/SCN.4/WP.10/Add.1)

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* This working paper also constitutes addendum 5 to document LOS/PCN/SCN.4/WP.15, which was not previously issued as a separate document.

Introductory note

The principles governing a relationship arrangement between the International Tribunal for the Law of the Sea and the International Seabed Authority were considered by Special Commission 4 on the basis of the working paper prepared by the Secretariat contained in document LOS/PCN/SCN.4/WP.10. The deliberations of the Special Commission on the subject are reflected in the Chairman's summary of discussions, as contained in document LOS/PCN/SCN.4/L.17.

The Special Commission decided that there was no need to present the outcome of the deliberations in the form of a draft agreement on these issues since no conclusions had been reached on the working paper and since it would not be possible to cover every issue on which a relationship arrangement might have to be regulated. The Special Commission thus mandated the Secretariat to prepare a "Report on the principles governing a relationship arrangement between the International Tribunal for the Law of the Sea and the International Seabed Authority" taking into consideration the deliberations of the Special Commission. In this regard it was agreed to reflect, in a concise manner, only those matters which would provide a better perspective of the issues. The present working paper constitutes the response thereto.

CONTENTS

		Paragraphs	Page
Introduction		1 - 2	4
A. General comments		3	4
B. Specific comments		4 - 22	4
Section I.	Preamble	4 - 5	4
Section II.	Governing principles and mutual recognition of responsibilities, rights and obligations	6	5
Section III.	Consultation, cooperation, coordination and recommendations	7 - 11	5
Section IV.	Exchange of information and documents	12 - 14	6
Section V.	Reports	15 - 16	6
Section VI.	Administrative cooperation and personnel arrangements	17 - 18	7
Section VII.	Budgetary and financial arrangements	19 - 20	7
Section VIII.	General	21 - 22	8

Introduction

1. Special Commission 4 considered 1/ a working paper entitled "Principles governing a relationship arrangement between the International Tribunal for the Law of the Sea and the International Seabed Authority", prepared by the Secretariat (LOS/PCN/SCN.4/WP.10). The Chairman's summary of discussions thereon is contained in document LOS/PCN/SCN.4/L.17.

2. The Special Commission took note that a relationship arrangement between the International Tribunal for the Law of the Sea and the International Seabed Authority should be considered in the context of precedents, primarily under Article 57 of the Charter of the United Nations, and other existing relationship arrangements. The Special Commission did not attempt to reach any conclusions, nor did it attempt to formulate texts. Instead, it examined the functions of the International Tribunal for the Law of the Sea (hereinafter referred to as "the Tribunal") and those of the International Seabed Authority (hereinafter referred to as "the Authority") in so far as they would be relevant to each other and to establishing a relationship between them. The Special Commission identified the type of issues that could be covered in a relationship agreement.

A. General comments

3. The Commission considered whether there was a precedent for empowering two institutions created by the same convention to conclude a further agreement between themselves. While it was exceptional for a single convention to establish more than one international institution, several delegations felt that such an agreement could be concluded. However, one delegation doubted whether there was really a need. It was considered important to ensure that the independence of the Tribunal should be maintained and that its decision-making should not be influenced by any other institution. Yet there was a need to establish a link which would permit cooperation, since the Tribunal and the Authority were completely independent of each other. One view was that there was limited need for such cooperation since it should only relate to administrative matters. Mere reiteration of the Convention's provisions that require interaction between them should also be avoided, given that the Tribunal and the Authority had a common constitutive instrument.

B. Specific comments

Section I. Preamble

4. It was stressed in this context as well that the Tribunal and the Authority had common roots in the Convention. Therefore, the preamble should merely contain a reference to that effect. It was noted that the Tribunal should appropriately be referred to as a judicial body since it was not an

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1/ At its 124th and 125th meetings of the eighth session.

international organization in the normal sense. The agreement therefore would not be one between two international organizations of a global character.

5. There should be an expression in the preamble of the desire to secure an effective relationship and thereby to facilitate the discharge of the responsibilities of each institution. It should also be noted that each organization, within its sphere of activity, would contribute to the objectives set out in the preamble to the Convention.

Section II. Governing principles and mutual recognition of responsibilities, rights and obligations

6. In this context as well, it was felt that the Tribunal should be defined as a judicial "body" or "institution" and that there should, in the view of one delegation, be an elaboration of the capacity of the Tribunal to conclude agreements. Notwithstanding that since the Tribunal and the Authority have their powers defined under the same Convention, which creates them, it appears desirable for each to recognize the character and responsibilities of the other.

Section III. Consultation, cooperation, coordination and recommendations

7. Consistent with the practice, it was understood that the arrangements should reflect the important need for the Tribunal and the Authority to consult and cooperate on matters of mutual interest. The cooperation extended by each institution to the other should extend not only to those matters on which clearly defined functions are allocated to each of them, but should also extend to a cooperative relationship whereby each could facilitate the activities of the other.

8. Bearing in mind that decisions of the Seabed Disputes Chamber in connection with cases of non-compliance are to be implemented by the Council, there is a need for cooperation and consultation. So also, in the process of the selection of the members of the Seabed Disputes Chamber from among the members of the Tribunal, the Assembly has to adopt recommendations of a general nature relating to the representation of the principal legal systems of the world and equitable geographic distribution that is to be assured. For this purpose as well, there would appear to be a need for consultation and cooperation between the Tribunal and the Authority in ensuring that the Assembly is possessed of all necessary information to adopt a recommendation which can be given effect by the Tribunal. The importance of such arrangements, which call for consultations between the two institutions, was underlined.

9. One view expressed was that cooperation should be confined to the cases where the Convention required it, and the Tribunal and the Authority could be left to work out the details of cooperation at a later stage.

10. Since their activities are disparate in most respects, a relationship arrangement between the Tribunal and the Authority may not need to provide for coordination of activities as envisaged according to the usual practice of relationships between international organizations.

11. Some emphasis was placed on the fact that the Tribunal, as an independent judicial body, could pass judgement on the actions and activities of the Authority, and thus should not be influenced by the Authority. The essence of a relationship agreement then was that one institution could facilitate the activities of the other and arrangements were needed to make this feasible.

Section IV. Exchange of information and documents

12. The Tribunal and the Authority could be expected to secure the regular exchange of current information of mutual interest. A free exchange of information was desirable and cooperation aimed at the exchange of information, for instance, was one of the natural areas of cooperation between these institutions. It would entail minimal financial implications. It was felt that if these institutions held back information from each other it could lead to problems.

13. It was acknowledged that there would be several situations where the exchange of information would facilitate the functioning of these organizations and where the interaction in their activities would give rise to the desirability of sharing of information. While the view was expressed that administrative regulations might not be required for the exchange of information and documents, it was understood that it may be in the interests of the Tribunal and Authority to do so. The Authority would ensure that the Tribunal is provided with necessary information and materials to deal with urgent situations, including especially those which threaten the environment. However, in one view, the exchange of information should be limited to administrative matters, and should not involve information regarding matters which are sub judice in respect of which the Tribunal may exercise its judicial functions and which could result in the Tribunal being influenced by the Authority.

14. While not opposed in principle to the exchange of information, one delegation could not conceive what type of information the Tribunal could present to the Authority. It was noted that the Authority was political in nature whilst the Tribunal was purely judicial and that the essential character of the two institutions should be maintained, while the independence of its members had to be preserved.

Section V. Reports

15. The question of reports being submitted by one international body to another with which it has a relationship agreement, either mesomotu or on its own initiative, was considered in the context of the Tribunal and the Authority. Consideration was given to the possibility, for instance, that the Authority may wish to have a report on the basis of which it could review the jurisprudence of the Tribunal and particularly the Seabed Disputes Chamber, so as to minimize the

likelihood of disputes arising as a result of factors within the control of the Authority and its organs. A counter view was that there was no need for the Tribunal to report to the Authority on its jurisprudence. While no clear need was seen for a separate treatment of reports, it was proposed that they be dealt with in context of the exchange of information and documents. Concern was expressed for the risk that reporting would impinge on the independence of the Tribunal.

16. Another view expressed was that the Tribunal should not furnish special reports to the Authority since it could leave the Registry overloaded with work.

Section VI. Administrative cooperation and personnel arrangements

17. In the context of the administration and personnel management of the Registry of the Tribunal and the Secretariat of the Authority, it was generally considered desirable, with a few reservations, to have some measure of uniformity as regards terms and conditions of service, levels of appointment and retirement benefits for staff. This would be facilitated by cooperation.

18. In cases of alleged violations by staff members of their obligations to the Authority under article 168, paragraph 3, the Seabed Disputes Chamber was considered to be the appropriate forum for adjudication. It was certainly contemplated in the negotiations that the tribunal of choice should be the International Tribunal for the Law of the Sea. The United Nations Administrative Tribunal and the World Bank Administrative Tribunal would be excluded from consideration as their statutes did not give them the competence to deal with cases where States Parties may institute proceedings against staff as permitted under these provisions of the Convention. However, some had misgivings about the Tribunal acting as the court of first instance in disputes involving the Authority and its staff, though it could act in an appellate capacity. In either case it would open another area for cooperation and consultation.

Section VII. Budgetary and financial arrangements

19. Some concern was expressed concerning the establishment of "close budgetary and financial relationships" between the Tribunal and the Authority since it could be interpreted to mean that the Authority and the Tribunal were financially dependent on each other. The very need for a close relationship was questioned and it was suggested that there should only be a provision on how contribution by the Authority to the Tribunal's budget would be made. In that connection, it was noted that a more effective mechanism than consultation was needed to determine the level and method of payment of the Authority's contribution to the Tribunal's budget.

20. The position taken by one delegation was that while article 19, paragraph 1, of the Statute provided for the contribution to the costs of the Tribunal by the Authority, that relationship should not prejudice the independence of the Tribunal, e.g., the Authority should not be allowed to restrict its contributions to the Tribunal's budget when it was dissatisfied with the latter's judgements.

Section VIII. General

21. Supporting the note at the end of the working paper (LOS/PCN/SCN.4/WP.10, para. 24) that "most of the instances cited ... could be brought under a single broad definition of cooperation, consultation and exchange of information", some delegations considered it unnecessary to carry out a detailed consideration of the issues as currently contained in the working paper.

22. Several categories of relationship activity were examined and identified for consideration as appropriate and for inclusion in an arrangement between the Tribunal and the Authority.

LOS/PCN/SCN.4/WP.16/Add.6
15 October 1993

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PREPARATORY COMMISSION FOR THE
INTERNATIONAL SEABED AUTHORITY
AND FOR THE INTERNATIONAL
TRIBUNAL FOR THE LAW OF THE SEA
Special Commission 4

PROVISIONAL REPORT OF SPECIAL COMMISSION 4

(DRAFT REPORT OF THE PREPARATORY COMMISSION UNDER PARAGRAPH 10 OF RESOLUTION I CONTAINING RECOMMENDATIONS FOR SUBMISSION TO THE MEETING OF STATES PARTIES TO BE CONVENED IN ACCORDANCE WITH ANNEX VI, ARTICLE 4, OF THE CONVENTION REGARDING PRACTICAL ARRANGEMENTS FOR THE ESTABLISHMENT OF THE INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA)

Addendum

(Administrative arrangements, Structure and Financial Implications of the International Tribunal for the Law of the Sea)

(LOS/PCN/SCN.4/WP.8/Rev.1)

93-56477 (E) 011293

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Introductory note

The final working paper on administrative arrangements, structure and financial implications of the International Tribunal for the Law of the Sea (SCN.4/WP.8/Rev.1), contained herein, was prepared pursuant to the decision of Special Commission 4 (LOS/PCN/L.101, para. 4). It constitutes addendum 6 to document SCN.4/WP.15, Draft Report of the Preparatory Commission under paragraph 10 of resolution I containing recommendations regarding practical arrangements for the establishment of the International Tribunal for the Law of the Sea, as referred to in the introductory note thereto, first paragraph. Pursuant to the decision of the Preparatory Commission, the Draft Report was reveiwed and revised. The revision is titled "Provisional Report of Special Commission 4 (Draft Report of the Preparatory Commission under paragraph 10 of resolution I containing recommendations for submission to the Meeting of States Parties to be convened in accordance with Annex VI, article 4, of the Convention regarding practical arrangements for the establishment of the Internaitonal Tribunal for the Law of the Sea)" (LOS/PCN/SCN.4/WP.16). The present paper constitutes addendum 6 to LOS/PCN/SCN.4/WP.16, the Provisional Report of Special Commission 4.

The present working paper takes into account the deliberations of the Special Commission commencing with its consideration of SCN.4/WP.8, "Administrative arrangements, structure and financial implications of the International Tribunal for the Law of the Sea", which was reviewed by the Special Commission during the summer meeting of the eighth session. The deliberations are reflected in the Chairman's summaries of discussions (SCN.4/L.14). It also takes into account the deliberations of the Special Commission in the consideration of SCN.4/WP.8/Add.1, "Supplementary cost estimates reflecting alternatives as to official working languages", and SCN.4/WP.8/Add.2, "A scheme to phase in the establishment of the International Tribunal for the Law of the Sea".

At the request of the Special Commission, the Secretariat has prepared the present document which incorporates the results of those discussions, taking into account the views expressed, the trends of the discussions and the suggestions made by delegations.

The present working paper synthesizes the contents of the previous working papers and presents, in a single draft, a survey of all the options examined by the Special Commission regarding the institutional structure, the alternative administrative arrangements and the consequential financial implications. These include alternatives as to the number of official working languages and alternative schemes for phasing in the Tribunal. The presentation would permit the necessary planning decisions to be made, bearing in mind that the estimates are indicative and for planning purposes.

CONTENTS

		Paragraphs	Page
I.	DOCUMENTATION	1	5
II.	INSTITUTIONAL FRAMEWORK	2 - 6	5
III.	THE SEAT AND BUILDINGS	7 - 16	6
IV.	STRUCTURE AND ADMINISTRATIVE ORGANIZATION	17 - 54	8
	A. The judiciary - institutional framework	19 - 23	8
	B. The Presidency and committees of the Tribunal	24 - 25	10
	C. The Registrar and the Registry	26 - 54	10
	1. Officials of the Registry	32 - 34	11
	2. Secretaries	35 - 36	12
	3. Executive Officer	37 - 38	12
	4. Budget and Accounts Section	39 - 40	13
	5. Documents Department	41 - 43	13
	6. Office Secretarial Services	44 - 46	13
	7. Printing Department	47 - 49	14
	8. Archives and Distribution Service	50 - 51	14
	9. Linguistic Services	52 - 54	14
V.	FINANCIAL IMPLICATIONS	55 - 74	15
	A. Members and Experts under article 289 of the Convention	58 - 67	15
	1. Remuneration of Members	58 - 64	15
	2. Installation, Travel, etc.	65 - 66	16
	3. Members Ad Hoc and Experts appointed under article 289 of the Convention	67	16
	B. The Registry	68 - 74	17

CONTENTS (continued)

		Paragraphs	Page
VI.	PHASING IN THE ESTABLISHMENT OF THE TRIBUNAL	75 - 103	17
	A. Financial constraints	75 - 76	17
	B. Financial and budgetary controls	77	18
	C. Scheme to phase in the establishment of the Tribunal	78 - 103	18
	1. Availability of Members	83 - 93	19
	2. Remuneration of Members	94 - 97	21
	3. Structure and staff of the Registry	98 - 99	22
	4. Languages	100 - 101	23
	5. General	102	24
	6. Trends and directions	103	24

Annexes

IA.	Organizational chart of the Registry of the Tribunal (for two official working languages)	25
IB.	Organizational chart of the Registry of the Tribunal (for one official working language)	26
IC.	Organizational chart of the Registry of the Tribunal (for six official working languages)	27
II.	Staffing structure of the Registry of the Tribunal	28
III.	Summary of recurrent financial implications	29
IVA.	Organizational chart of the Registry of the Tribunal (Scheme A) .	30
IVB.	Organizational chart of the Registry of the Tribunal (Scheme B) .	31
IVC.	Organizational chart of the Registry of the Tribunal (Scheme C) .	32
V.	Staffing structure of the Registry of the Tribunal	33
VI.	Summary of recurrent financial implications	34

I. DOCUMENTATION

1. The consideration of the administrative arrangements, structure and financial implications of the International Tribunal for the Law of the Sea by the Special Commission was carried out on the basis of the following working papers: "Administrative arrangements, structure and financial implications of the International Tribunal for the Law of the Sea" (SCN.4/WP.8); "Supplementary cost estimates reflecting alternatives as to official working languages" (SCN.4/WP.8/Add.1); and "A scheme to phase in the establishment of the International Tribunal for the Law of the Sea" (SCN.4/WP.8/Add.2); presented by the Secretariat. The Special Commission also had before it two reference papers comprising instructions to the Registry of the International Court of Justice; and a report on the functioning and practice of the International Court of Justice (Reference Papers 6 and 7 respectively).

II. INSTITUTIONAL FRAMEWORK

2. The International Tribunal for the Law of the Sea, as the central judicial organ for the resolution of disputes under the 1982 United Nations Convention on the Law of the Sea, will function in accordance with its Statute (annex VI of the Convention) which forms an integral part of the Convention. 1/ The Tribunal is composed of 21 judges elected by a meeting of States Parties to the Convention for a period of nine years.

3. The Tribunal has jurisdiction over all disputes relating to the interpretation or application of the Convention with certain exceptions and limitations. As a composite part of the Tribunal, there is constituted within it a Seabed Disputes Chamber which has exclusive and compulsory jurisdiction, with some exceptions, over the settlement of disputes relating to the international seabed area and the interpretation or application of that Part of the Convention (Part XI). The Seabed Disputes Chamber also has advisory jurisdiction in relation to matters submitted to it by the International Seabed Authority.

4. The expenses of the Tribunal, in accordance with article 19 of its Statute, are to be borne by States Parties to the Convention and by the International Seabed Authority on such terms and in such a manner as decided at meetings of States Parties. When an entity other than a State Party or the International Seabed Authority is a party to a case submitted to the Tribunal, the Tribunal shall fix the amount which that party is to contribute towards the expenses of the Tribunal.

1/ "Convention" means the 1982 United Nations Convention on the Law of the Sea.

"Statute" means the Statute of the International Tribunal for the Law of the Sea, annex VI of the Convention.

5. In matters concerning its administration, the Tribunal will apply articles 1 and 12 of its Statute and the relevant articles of the Rules of the Tribunal. 2/

6. Since the general procedures for the functioning of the Tribunal and its powers are on the lines of the Statute of the International Court of Justice and other international judicial tribunals, 3/ the administrative structure of the Tribunal would take special account of that precedent. The Tribunal is distinct from the International Court, and as an independent judicial body it has no direct link to any other international organization or body. It is independent of the International Seabed Authority and of the United Nations. Having a legal personality of its own, it also has the competence to conclude international agreements.

III. THE SEAT AND BUILDINGS

7. The Seat of the Tribunal is to be established in the Free and Hanseatic City of Hamburg in the Federal Republic of Germany. This does not however preclude the Tribunal from sitting and exercising its functions elsewhere whenever it considers it desirable to do so (Statute, art. 1, paras. 2 and 3).

8. An agreement should be concluded between the Tribunal and the Government of the Federal Republic of Germany determining the conditions under which the Tribunal will use the premises. This agreement shall be approved by the meeting of States Parties to the Convention (convened in accordance with the Statute, art. 4, para. 4).

9. The Tribunal will occupy the premises built at the expense of the Government of the Federal Republic of Germany in the City of Hamburg, in the district of Altona in Nienstedten. The offer made by the Government of the Federal Republic of Germany, communicated by letter dated 9 February 1987 (LOS/PCN/80) stated that the Federal Republic would erect the office building for the International Tribunal for the Law of the Sea at its own expense and make it available in accordance with the international practices that have evolved in connection with the provision of premises for United Nations bodies. This was elaborated by the German Government which stated that with regard to the transfer of the building and its premises to the Tribunal it intended to follow the practice in the headquarters agreements between the Government of Austria and the United Nations and its specialized agencies at Vienna. Rent for the premises would be of a purely symbolic or nominal nature and thus there would not be any financial implications in this regard.

2/ The "Rules" means the draft Rules of the Tribunal.

3/ Official Records of the Third United Nations Conference on the Law of the Sea, vol. V (United Nations publication, Sales No. 76.V.8), document A/CONF.62/WP.9/Add.1, p. 122, at p. 124, para. 30.

10. In determining the building requirements for the Tribunal, the Special Commission had before it the report presented by the delegation of Germany. 4/ The report recorded that the proposed Staffing and Accommodation Plan had been reviewed in collaboration with the United Nations officials concerned, following a meeting with the Secretariat in March 1988.

11. In keeping the Preparatory Commission abreast of developments, information was provided periodically on the specifications and progress of planning for the building. When the delegation informed the Preparatory Commission that it would construct the building for the Tribunal at its own expense and make it available to the Tribunal, the offer included the installation of several interpreters' booths and technicians' booths in the Main Court Room and two interpreters' booths together with one technician's booth in each of the two hearings chambers. The offer also included the equipment and the technical accessories required in this connection. It was supplemented by an undertaking that, pending the construction of the Tribunal buildings, if interim facilities are required, an appropriate building would be provided by the Government (SCN.4/L.8).

12. An international architectural competition for the construction and design of the building to house the International Tribunal in Hamburg was organized by the Federal Government in 1989. Twenty national and international architects were invited to submit designs taking account, inter alia, of accommodation and staffing plans for the Tribunal. Estimates and assumptions as to the requisite space and facilities for the building were drawn up by the relevant government authorities in consultations with the United Nations Secretariat. Inter alia, the requirements were assessed on the basis that the Tribunal would have two official working languages.

13. The architectural competition specifications were for the development of a building where the design characteristics should have outstanding internal and external architectural features suitable to make the International Tribunal for the Law of the Sea an ideal setting for international litigation. An international jury established for this purpose met in 1989 and awarded the prize to an architectural firm from Munich, Architects Baron Alexander and Baroness Emanuela von Branca. A model of the design was presented in Germany and at the United Nations Headquarters in New York. Following the award, the architects provided a revised design in May 1990. The competition proceedings and results were documented in a brochure presented by the German delegation to the eighth session of the Preparatory Commission.

14. The further steps taken in finalizing the design and in the planning process were recorded in a document and revised brochure (SCN.4/L.16 and Add.1 respectively) 5/ which were subsequently distributed as documents to the Preparatory Commission.

4/ SCN.4/1991/CRP.40, Report on the progress of work dated 13 March 1991 concerning the building requirements and facilities for the International Tribunal for the Law of the Sea in Hamburg; Statement of the Parliamentary State-Secretary, H.E. Mr. Rainer Funke, Ministry of Justice of the Federal Republic of Germany.

5/ Refer LOS/PCN/L.107, para. 7.

15. The selected architects have submitted more detailed drafts for the construction of the building. On this basis a budgetary proposal has been formulated by the competent German authorities (the Federal Ministry of Justice, the Federal Ministry for Regional Planning, Building and Urban Development, the Finance Authorities of Hamburg) and the architects. This budgetary document is based on a revised and approved accommodation plan which designates 5,720.6 square metres of floor space, representing an increase of 1,338 square metres over the plan submitted in 1988. In elaborating the requirements for the building and equipment needs of the Tribunal, including facilities and furnishings to be provided by the host country, it was noted that this would include the equipment for heating, lighting, telephones, telefax, interpreters' booths, sanitary and electronic installations and ventilation equipment for special rooms. Storage, filing and cloakroom facilities in the relevant offices and basic furniture such as desks, filing equipment, trolleys, reception tables, soft furnishings, chairs, furniture for sittings and meeting rooms, archive and library shelving and equipment for the restaurant area are contemplated as coming within the furnished facility to be provided. 6/

16. The Special Commission at its tenth session in Kingston on 11 March 1992 took note of and approved the report together with the specifications for the building as provided in document SCN.4/L.16 and more fully set out in the annex thereto - a brochure (SCN.4/L.16/Add.1), 7/ which should be taken note of by the Meeting of States Parties.

IV. STRUCTURE AND ADMINISTRATIVE ORGANIZATION

17. In determining the needs of the administrative organization of the Tribunal, the Special Commission evaluated the requirements as to the judiciary and associated Experts, the internal structure and staffing of the future Tribunal and the level of services to carry out its judicial functions.

18. For the purpose of determining the level of activity and the consequential level of services and cost estimates (based on 1990 costs), it is assumed that the annual workload of the Tribunal will comprise five to six contentious cases and four to six applications such as those for provisional measures or the prompt release of vessels and crews. These estimates are based also on the assumption that the Tribunal will have no more than two official working languages.

A. The judiciary - institutional framework

19. The Convention establishes a Tribunal with 21 independent Members who should have the requisite qualifications and competencies. 8/ The Convention

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6/ This is not contemplated as including the residential premises intended for occupation by the President of the Tribunal and/or the Caretaker's accommodation. Refer letter dated 9 February 1987 (LOS/PCN/80).

7/ Refer LOS/PCN/L.107, para. 7.

8/ Annex VI, art. 2, para. 1.

also requires the representation of the principal legal systems of the world and equitable geographic distribution in the constitution of the Tribunal as a whole. 9/ It further specifies that no less than three Members should be from each geographic group established by the General Assembly of the United Nations. 10/

20. The Statute further requires that all available Members of the Tribunal shall sit and that a quorum of 11 elected Members shall be required to constitute the Tribunal. The determination as to which Members are available to constitute the Tribunal for a particular dispute is to be made by the Tribunal itself, 11/ subject to the nationality requirements. 12/ If the parties request, the disputes or application would be heard and determined by a chamber; otherwise it would be submitted to the Tribunal. 13/ Disputes relating to the international seabed area and submitted in accordance with Part XI of the Convention would be submitted to the Seabed Disputes Chamber.

21. The Seabed Disputes Chamber comprises 11 Members of the Tribunal selected by it from among the 21 Members. It can establish ad hoc chambers of three Members. 14/ The membership of the special chambers of the Tribunal, which include the Chamber of Summary Procedure with five Members, 15/ and the standing special chambers with three or more Members for dealing with particular categories of disputes, could overlap, since there is no restriction. Such would be the case also in constituting ad hoc chambers of the Tribunal, assuming that they were composed of no more than five members. 16/ Their composition is decided on by the Tribunal with the approval of the parties to the dispute.

22. The requirements set out in paragraphs 19 to 21 above are the primary requirements of the Convention. They provide the institutional framework for the judiciary of the Tribunal when exercising its contentious or advisory jurisdiction.

23. Given the provisions of the Statute concerning the election of Members, it is necessary to fulfil the requirement that all 21 Judges be elected at the initial election. This is in compliance with the letter of the Statute. 17/

9/ Ibid., para. 2.

10/ Ibid., art. 3, para. 2.

11/ Ibid., art. 13, para. 2.

12/ Ibid., art. 17.

13/ Ibid., art. 15, paras. 3 and 4.

14/ Ibid., art. 35 and art. 36, para. 1.

15/ Ibid., art. 15, para. 3.

16/ Ibid., art. 15, para. 2.

17/ Ibid., art. 2.

The stipulations therein as to geographic distribution and representation of the principal legal systems has also to be fulfilled.

B. The Presidency and committees of the Tribunal

24. The President would preside over all meetings of the Tribunal and would direct the work and supervise the administration of the Tribunal. The President will reside at the Seat of the Tribunal (Statute, art. 12, para. 3).

25. In determining the requirements for the internal administration, the existing practice and the most appropriate precedent, particularly that of the International Court of Justice, was evaluated. Following that experience, consideration was given to the establishment of several committees, such as a Rules Committee, a Budgetary and Administrative Committee, a Committee on Relations and Public Information, a Library and Archives Committee and a Staff Appeals Committee. 18/ While there is a need for committees, the Special Commission is of the view that excessive specification should not be given in establishing a plurality of committees at this stage. There is an important need for a Budgetary and Administrative Committee and for a Staff Appeals Committee. Administrative matters could be prepared by the Budgetary and Administrative Committee for decisions by the Tribunal. The establishment of other committees is a matter within the discretion of the Tribunal and should be left to it to determine and to establish as appropriate.

C. The Registrar and the Registry

26. The Registry is the administrative organ of the Tribunal. It will provide legal, procedural, administrative, diplomatic and any technical support for the Tribunal. It will also have responsibility for the financial and accounting administration, and for documentation archiving and library services. The role of the Registry is defined in the Rules of the Tribunal. The organization of the Registry and the appointment of staff is to be approved by the Tribunal on the recommendation of the Registrar.

27. The Registrar and such other officers as considered necessary are to be appointed by the Tribunal in accordance with article 12 of its Statute. The Registrar is to be elected by the Members of the Tribunal from among candidates proposed by Members. He/she is to be elected for a term of seven years (Statute, art. 12, para. 2). The Registrar will reside at the Seat of the Tribunal (Statute, art. 12. para. 3).

28. The Registrar would be responsible for all departments of the Registry. The staff of the Registry will be under his control and he/she alone should be authorized to direct the work of the Registry, of which he/she is the Head. The general functions of the Registrar would be defined by the Rules. In addition to these functions, the Registrar is to be responsible for the preparation of cases for consideration by the Tribunal and would assist the Tribunal in drafting the texts of judgments, decisions, orders and advisory opinions. The Commission noted that while the Registry should be under the control of the

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18/ Refer SCN.4/WP.8, p. 7, paras. 10-16.

Registrar, who alone would be authorized to direct the work of the Registry, he/she would exercise these functions under the authority of the Tribunal itself. 19/

29. The Registrar is required to prepare a document of "Instructions for the Registry" for approval by the Tribunal. These instructions will set out: (a) the duties of the Registrar and of the Deputy Registrar in general; (b) the general and financial administration of the Tribunal; (c) the duties of the other members of staff, including the organization of the various departments of the Registry.

30. The Deputy Registrar will share the duties devolving upon the Registrar both in connection with the exercise of the judicial and advisory powers of the Tribunal and in connection with the direction of the Registry. The Registrar should make sure that in dividing the work between himself and the Deputy Registrar both of them are constantly in touch with the work of the Tribunal and the Registry.

31. The position of Assistant Registrar may be created and an election held to make the appointment, if and when considered necessary. 20/ The Assistant Registrar could execute the duties devolving upon the Registrar both in connection with the exercise of the judicial and advisory powers of the Seabed Disputes Chamber and with the administration of the function of the Registry.

1. Officials of the Registry

32. The officials of the Registry are to be appointed by the Tribunal on proposals submitted by the Registrar (Statute, art. 12, para. 2). General Service category and temporary staff would be appointed by the Registrar in accordance with the Staff Regulations and Instructions for the Registry.

33. The Staff Regulations to be drawn up by the Registrar and approved by the Tribunal will embody the fundamental conditions of service and principles of personnel policy of the Registry. The Registrar will provide and enforce staff rules consistent with these principles. All officials of the Registry, whether permanent or temporary, should be proficient in at least one of the official languages of the Tribunal, it being desirable that they have a working knowledge of the other.

34. For the purposes of the establishment of the Tribunal, consistent with the practice of similar institutions and the membership and functions of the Tribunal, the alternatives for staffing structure were presented in organizational charts and in the tables of post requirements provided in annexes IA, IB, IC, II, IVA, IVB, IVC and V.

19/ SCN.4/L.14.

20/ Refer SCN.4/L.14.

2. Secretaries

35. Secretaries of the Tribunal would be appointed from amongst the staff of the Registry. The Registrar would delegate to each Secretary such work as he/she thinks fit. The responsibilities would include, inter alia, legal research, legal review and advice on substantive and procedural issues, in the preparation of cases, in the drafting and translation of judgments, decisions, orders and advisory opinions; interpretation at the sittings of the Tribunal; minutes-writing, preparation of publications, maintaining relations with other organizations and external relations. The Secretaries would also provide support services for the Members of the Tribunal, including Ad Hoc Members. They would fulfil the research needs of the 21 Members. By combining the functions of the Judiciary Support Services with those of the Secretaries of the Legal Division (see annex IA), the structure of the Registry is simplified and a separate Judiciary Support Service would not be required. However, this should in no way restrict the right of Members of the Tribunal to have direct access to legal research assistance without going through the Registrar, as an intermediary, notwithstanding that the Secretaries would be in his/her charge.

36. The requirements in this regard for a functional and active initial establishment 21/ could be assessed as follows: the Secretaries of the joint Legal Department and Judiciary Support Service would include a Principal Legal Secretary (D-1 level) and one Senior Secretary (P-5 level). In addition, there would be five First Secretaries (P-4 level); two Secretaries (P-3 level) and seven Associate Secretaries/Researchers/Legal Assistants (P-2 level). Support for the functions of the Secretaries would require 17 General Service staff (secretarial). The Judiciary Support Service, it is assumed, would be headed by one of the First Secretaries (P-4 level) and would include six of the Associate Secretaries/Researchers/Legal Assistants (P-2 level) supported by 10 of the General Service secretaries.

3. Executive Officer

37. The Executive Officer would be responsible to the Registrar for all administrative, personnel, budgetary and financial activities of the Tribunal. The Executive Officer would function as Secretary of the Budgetary and Administrative Committee. The administrative procedures to be followed in the fulfilment of these functions, including the financial functions by the Accountant-Establishment Officer, would be laid down by the Registrar and included in the Instructions for the Registry.

38. The requirements in this regard for a functional and active initial establishment 22/ could be assessed as follows: An Executive Officer (D-1 level) would be in overall charge of administration. Falling under the Executive Officer would be a Budget and Accounts Section as detailed below. An Administration and Personnel Section will consist of an Administrative Officer (P-3 level) and five Administrative Assistants (General Service level). The General Service Section would also fall under the same supervision and would

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21/ Refer para. 18 above.

22/ Refer para. 18 above.

comprise a Coordinator (P-3 level), two telephone operators/receptionists (General Service level) and five messengers (General Service level). There would also be two Security Guards (Security Service level).

4. Budget and Accounts Section

39. An Accountant/Establishment Officer would head this Section and would be responsible to the Executive Officer for accounts, payments, purchases of equipment and supplies and the maintenance of all accounting ledgers and books. The Registrar would ensure that the strictest economy is observed in incurring liabilities and that no payment is made except where an obligation actually exists. This section will also service the Budgetary and Administrative Committee.

40. The requirements in this regard for a functional and active initial establishment could be assessed as follows: The Budget and Accounts Section is assumed to comprise the Accountant/Establishment Officer (P-5 level), a Budget Officer (P-2 level) and three Accounts/Budget Clerks (General Service level).

5. Documents Department

41. The Head of the Documents Department would also be the Tribunal's Librarian, who would be responsible to the Registrar. He/she would provide the Members of the Tribunal, the Registrar and members of staff with any information which they may require in the course of their work and would obtain for them any reference documents they may need, from the volumes of the Tribunal's library and any other library in Hamburg as well as the libraries of other international courts or tribunals, and if necessary from other libraries.

42. The Head of the Documents Department would keep the Registrar regularly informed of newly published works purchased by the Tribunal and draw his attention to books and review articles concerning the Tribunal and international law, in particular the law of the sea, and other relevant fields of marine affairs. Detailed instructions as to the duties of the Head of the Documents Department would be laid down in the instructions for the Registry and further defined by the Registrar.

43. The requirements in this regard for a functional and active initial establishment could be assessed as follows: The Documents Department would comprise the Head of the Department and Librarian (P-4 level) and one Associate Librarian/Documents Officer (P-2 level), together with one General Service Library Assistant.

6. Office Secretarial Services

44. The Registrar would appoint a Head of the Department of Office Secretarial Services to provide shorthand, typing, word-processing and other automated office services. The Head of the Department will be in charge of the clerical work necessary for preparing and reproducing documents, including correspondence and shorthand notes of hearings of the Tribunal and the Seabed Disputes Chamber,

with the assistance of verbatim reporters, shorthand typists and automated officer services staff.

45. This Office would also be in charge of the indexing. It would maintain manual or computerized indexes of the minutes of the meetings of the Tribunal and of the Seabed Disputes Chamber; the Tribunal's publications; and certain special indexes; and as required provide research in the Minutes of the Meetings of the Tribunal and of the Seabed Disputes Chamber.

46. The requirements in this regard for a functional and active initial establishment could be assessed as follows: The Office Secretarial Services will be headed by a P-4 level staff member and will have a supervisor (P-2 level) and five secretarial support staff (General Service).

7. Printing Department

47. The Printing Department would be headed by a staff member appointed by the Registrar who is to be responsible for the preparation and examination of the Tribunal's publications and all other functions relating to printing. These duties would also relate to pleadings which the Registrar causes to be printed at the cost of the parties.

48. In general, the Head of the Printing Department would act as an intermediary between the Registry and the Printers. He/she would take all measures to maintain and increase the circulation of the Tribunal's publications.

49. The requirements for a functional and active initial Printing Department could be assessed as a P-2 level head of department with one General Service support staff member.

8. Archives and Distribution Service

50. An archivist is to be appointed who will be responsible to the Registrar for the keeping of the archives and for the dispatch and distribution of documents in accordance with the procedure to be laid down by the Registrar. This procedure would be contained in the Instructions to the Registry.

51. The requirements in this regard for a functional and active initial establishment could be headed by a Professional officer (P-3 level) with a support staff of four General Service personnel.

9. Linguistic Services

52. The Linguistic Services would be provided under the supervision of the Registrar and would have the responsibility to ensure the translation of the documentation into the official languages of the Tribunal as necessary. This would not include interpretation services which will be provided on a temporary basis as needed.

53. This assumes that in its day-to-day services the Linguistic Services would ensure the functioning of the Tribunal in two official languages. Unofficial translation of the pleadings in six languages and judgments to be provided in the other four official languages of the United Nations after completion of each application, case or advisory opinion would be done by temporary staff.

54. The requirements in this regard for a functional and active initial establishment could be assessed as comprising two Revisers/Translators in the two languages (P-4 level) and two Translators in the two languages (P-3 level). The clerical requirements will be provided by the Office Secretarial Services.

V. FINANCIAL IMPLICATIONS

55. For a functional and active initial establishment, the staffing structure has been assessed on the basis of experience of other international courts and tribunals, primarily that of the International Court of Justice, taking into account that the Tribunal has 21 Members and that it also has a Seabed Disputes Chamber. Additionally, the Tribunal also has jurisdiction to deal with such matters as the prompt release of vessels and crews and provisional measures. Access to the Seabed Disputes Chamber by entities other than States is a further factor that has been taken into account.

56. For the purpose of determining the level of services and consequential cost estimates, it is assumed that the annual workload of the Tribunal will comprise five to six contentious cases and four to six applications such as those for provisional measures or the prompt release of vessels and crews. 23/ These estimates are based also on the assumption that the Tribunal will have no more than two official working languages.

57. The overall financial implications may be conveniently divided under two headings. The first relates to the remuneration of Members, Members Ad Hoc and Experts (including pension and other costs), while the second comprises the administrative costs of the Registry and the services provided by it.

A. Members and Experts under article 289 of the Convention

1. Remuneration of Members

58. The Statute provides that Members shall be paid an annual allowance and a special allowance for each day they exercise their functions. The amount of special allowance cannot exceed the amount of the annual allowance. 24/ In assessing the total annual remuneration to be paid to Members it was considered appropriate to be consistent with the practice and level of remuneration of Judges of the International Court of Justice and other international tribunals and that the total annual remuneration should not exceed $100,000. 25/

23/ See para. 21 above.

24/ Statute, art. 18, para. 1.

25/ Based on 1990 costs and levels of remuneration.

59. Of this $100,000, $60,000 could be regarded as an annual allowance and the remaining $40,000 would constitute the maximum special allowance, assuming that a Member of the Tribunal exercises his functions for 100 working days. For each working day, the daily rate of special allowance is thus $400.

60. Members of the Tribunal would have to work at least 100 working days to receive the maximum special allowance. The amount of $60,000, as a fixed annual allowance and the maximum $40,000 special allowance would be based on the assumption that 86 per cent of each of these is the base allowance and the remaining 14 per cent is a cost-of-living allowance which would be adjusted according to the cost-of-living index at the duty station.

61. The President of the Tribunal would receive an additional $15,000 per year as a special allowance bearing in mind his position and the requirement that he/she reside at the Seat of the Tribunal and be available on a full-time basis. He/she would therefore be entitled to the annual and special allowances.

62. The Vice-President of the Tribunal is entitled to a special allowance when he/she acts for the President, and this is computed on the basis of $100 per day for a maximum of 100 days. The maximum allowance therefore would be $10,000.

63. For the purposes of the estimates, the retirement benefits of the Members will be based on the annual base remuneration on the assumption that the contribution will only be made by the Tribunal. The contribution by the Tribunal is assumed to be the same percentage as contributed by the United Nations for its staff. For the purposes of this computation, the average annual remuneration of a Member is estimated as the full amount of the annual allowance and 50 per cent of the maximum special daily allowance.

64. Remuneration levels are to be reviewed and revised periodically by meetings of States Parties on the basis of the workload of the Tribunal (Statute, art. 18, para. 5, see also footnote 2 above).

2. Installation, travel, etc.

65. The estimated requirements for the travel of non-resident judges to attend sessions of the Tribunal have been assumed at two journeys per annum, and at one journey every second year for those who reside at the seat of the Tribunal.

66. Official travel requirements would be provided to permit the President to attend meetings of the International Seabed Authority as well as travel and subsistence for travel of Members on other official business of the Tribunal.

3. Members Ad Hoc and Experts appointed under article 289 of the Convention

67. Article 17 of the Statute provides for Members Ad Hoc to be treated on the same basis as Members. Although they do not receive an annual allowance, they would receive a special allowance for each day on which they exercise their functions (Statute, art. 18, para. 4). For the purpose of computation, this has been set at the same level as that paid to the Members at $400 per day for each

day they make themselves available for the work of the Tribunal. The same rate of allowances has been applied to experts appointed under article 289 of the Convention who sit with the Tribunal.

B. The Registry

68. The establishment for the Registry has been based on an initial establishment consistent with the size and functions corresponding to those of other international courts, in particular, the International Court of Justice. Allowance has been made for the fact that the Registry of the Tribunal would not have the support services enjoyed by the Registry of the International Court, which is an organ of the United Nations. In addition, it has been taken into account that the membership of the Tribunal is substantially larger than that of the International Court. Whenever the workload of the Tribunal increases substantially beyond the level assumed for the purposes of these estimates (see para. 55 above), additional temporary assistance services would be required.

69. The initial establishment of the Tribunal would be composed as indicated in annex II (column for two languages), comprising a Registrar at the Assistant Secretary-General level and a Deputy Registrar at the Director level. The 31 Professional posts and their designations are also contained in annex II. Forty-five General Service posts are also proposed for the purposes of the initial establishment.

70. Temporary assistance for meetings is primarily intended for language and secretarial services that cannot be performed by regular staff. This would include the funds required for recruitment and travel of freelance interpreters, translators and steno-typists required for documentation of the Tribunal prior to and during the servicing of meetings and public hearings.

71. General temporary assistance is intended to provide General Service level support services such as those of additional secretaries, messengers, library assistants and telephone operators.

72. Overtime requirements are intended to cover secretarial assistance to Members and Members Ad Hoc and for regular staff during peak workload periods.

73. A provision for official travel of staff is based on requirements for staff travel for official purposes.

74. A composite budgetary statement of the overall annual recurrent financial implications is contained in annex III (column for two languages).

VI. PHASING IN THE ESTABLISHMENT OF THE TRIBUNAL

A. Financial constraints

75. Widespread concern prevails for the achievement of maximum economy in the establishment and initial functioning of the Tribunal. This, notwithstanding the importance attached to the maintenance of the highest possible level of efficiency and the absolute independence and integrity of the Tribunal as a

judicial body. Consistent with the concern regarding the costs of the Tribunal was the general understanding that the Tribunal should begin its work on a reduced scale with a view to gradually increasing its size in parallel with its increasing workload. This proceeds from the assumption that deep seabed mining is not likely to commence until many years after the establishment of the Tribunal. 26/

76. It is also understood that in the first few years after entry into force of the Convention there might not be many more than 60 Parties that have ratified it. Yet, the stipulated number of Members (judges) of the Tribunal should not at any stage of its existence be reduced from the number specified in the Convention. It should always be composed of the full complement of 21 Members. 27/ This requirement is significant in ensuring appropriate geographical distribution among the Members of the Tribunal and the representation of the principal legal systems.

B. Financial and budgetary controls

77. An effective control mechanism for regulating the finances and budget of the Tribunal should be created, which should in no way affect its independence while ensuring that it would be as cost-effective as possible. The view was broadly shared that there should be continuous control over the spending of the Tribunal. No final conclusion can now be reached as to the nature of such mechanism or its precise constitution. While proposals were made to utilize the pre-existing financial review bodies such as that of the United Nations and its agencies, the Advisory Committee on Administrative and Budgetary Questions (ACABQ), reference was made to the possibility of utilizing the review body to be created by the International Seabed Authority (Authority), its Finance Committee, but this was countered as it was considered inappropriate to make such a link. Reservations with respect to these proposals were founded on the fact that the Tribunal is an independent body vis-à-vis the United Nations and the Authority.

C. Scheme to phase in the establishment of the Tribunal

78. The Special Commission deliberated on the administrative arrangements, structure and financial implications of the Tribunal, as reflected in document LOS/PCN/SCN.4/WP.8. That arrangement envisaged the initial establishment of an active and functional Tribunal with two official working languages. A scheme for phasing in the establishment of the Tribunal to serve during the initial stages of its existence was drawn up. The scheme was intended to reflect the most efficient initial institutional structure, taking special account of the necessity for economy and for minimizing the financial burden on States Parties.

79. The main criteria applied were that the Convention, including the Statute of the Tribunal, and the Draft Rules of the Tribunal provide the primary framework within which the Tribunal would function. The appropriate

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26/ LOS/PCN/L.81, para. 6.

27/ Convention, annex VI, art. 2.

international practice, where relevant, in particular that of the International Court of Justice, were resorted to in determining the manner in which the Tribunal would operate and in identifying a functional framework for the Tribunal. For the purpose of estimating relevant financial implications, the experience of similar institutions was resorted to for guidance, while the United Nations practice was used as the basis for staff remuneration and allowances.

80. Particular note has been made of the fact that the Tribunal is responsible for its internal functioning and has a wide degree of discretion in establishing the modalities for doing so.

81. In formulating a scheme to phase in the Tribunal it was sought to ensure that:

(a) The approach was consistent with the requirements of the Convention and the Statute of the Tribunal;

(b) The Tribunal and its chambers would be able to respond, within a reasonable time frame and given the circumstances, to urgent cases, applications or requests for advisory opinions submitted to it;

(c) The institution and its staffing would provide a viable Registry with the capacity to serve the needs of the Tribunal.

82. For the purpose of determining the size and structure of the initial institution which would be fully functional:

(a) It has been assumed that the case-load and the level of activity in contentious cases would be similar to the current level of activity on contentious matters before the International Court of Justice. Additionally, it is anticipated that from the very outset applications would be made for provisional measures and for the prompt release of vessels and crews;

(b) It has been assumed that the Tribunal would use no more than two official working languages. However, unofficial translations of the pleadings, judgments, opinions and orders would be issued in the other four official languages of the United Nations after completion of each application, case or advisory opinion.

1. Availability of Members

83. The Statute does not require that the elected Members should refrain from employment or activity, other than certain specified activities. They could thus maintain a professional occupation or some form of employment that is not subject to these restrictions, unless they are actively engaged in the business of the Tribunal.

84. All 21 Members are to be elected at the first election in order to comply with the requirements of the Convention. However, during the initial phase immediately following its establishment, the Tribunal would have the discretion to utilize a limited number of Members to serve actively on a continuing basis

for a fixed period of time, while the others would hold themselves available in reserve. Thereafter there would be a rotation of those in the active group with those in reserve. Thus, by some process of selection a limited number of Members would be identified who are to be active and available for the duration of the fixed time period. The others who are "on reserve" would be aware that it is unlikely that they would be called upon to serve at short notice. Thus, they would be relatively free to be otherwise occupied during that time period. During the next term of such an arrangement, a similar number of Members would be identified on the basis of rotation. Such a system of rotation would need to be done on an equitable basis while ensuring that geographical distribution and the representation of the principal legal systems are assured.

85. Thus, during the initial phase the active Members would have to be available at short notice and possibly to maintain a presence at or near the Seat, while the others could remain in their usual places of residence. The President is required to be resident at the Seat of the Tribunal 28/ and it can be reasonably assumed that the Vice-President would also be required to be present at the Seat at most times.

86. If only these 2 Members are to be active and available at all times, the other 19 Members would be in "reserve". However, this would not enable the Tribunal to function without securing the participation of an additional number of Members as required to constitute a chamber, or to fulfil the quorum requirement.

87. To ensure that all geographic groups are represented among the "active" group of Members, the minimum number of required would be five Members. If it is intended to have a quorum of Members constituting the Tribunal present, then the number of Members involved would be a minimum of 11. This would also permit appropriate geographical distribution. In any of these cases, i.e., whether 2, 5 or 11 Members are required to be on active duty, the remaining Members in each case would hold themselves available in reserve, in the event that a greater number of Members is required or when a full Tribunal has to be constituted.

88. The first alternative of the cost implications (annex VI (scheme A)) is founded on the assumption that two Members are to be active and available at all times and that these would be the President and the Vice-President.

89. The second alternative in the cost implications (annex VI (scheme B)) is that five Members - the President, the Vice-President and a minimum of three other Members - would at all times be active and available. This alternative would permit the constitution of the standing chambers or special chambers, and a Chamber of Summary Procedure, each of which requires no more than five Members. 29/ Even the ad hoc chambers could be constituted, if they are of limited size.

90. The third alternative would be for 11 Members including the President and Vice-President to be in the "active" group and available at all times (annex VI (scheme C)). This would permit not only the constitution of the special

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28/ SCN.4/WP.2/Rev.1/Parts I and II, art. 12, para. 3.

29/ Ibid., art. 15.

chambers and the Chamber of Summary Procedure, but also the constitution of the whole Tribunal with the quorum requirement fulfilled and the constitution of the Seabed Disputes Chamber as well.

91. Two of the alternatives in these proposals provide for the availability of five or more Members in the active and available group. These alternatives would permit the constitution of the standing and ad hoc chambers of limited size. This is consistent with the more recent trends in the experience of international courts and tribunals, which is that disputant parties tend to resort to pre-constituted or ad hoc chambers, as compared with the frequency with which there are requests for the constitution of the full tribunal to hear or determine a case or application.

92. These alternatives also ensure the availability of the Chamber of Summary Procedure which could be pre-constituted and may be resorted to at any time (Statute, art. 15, para. 3). They would also permit the constitution of special chambers comprising a minimum of three Members for dealing with particular categories of disputes (Statute, art. 15, para. 1). These alternative proposals would also permit appropriate geographic distribution and representation of the principal legal systems even within the chambers. These proposals also make it possible to convene all Members of the Tribunal or to convene 11 Members who would constitute a quorum of the whole Tribunal, as and when required, without any restriction and without undue delay. They do not in any way restrict the possibility for the full Tribunal to be constituted and to meet immediately following its initial establishment for such period as may be required to adopt its Rules of Procedure and other internal rules for its functioning or for its administration.

93. As and when the workload of the Tribunal increases, or when there is an intensity of work at any point in time, the Tribunal can function either in its fully constituted form or in its initial form.

2. Remuneration of Members

94. The Statute provides for the Members to be remunerated on the basis of annual allowances and special allowances. In any case where a Member is in the "active" group and is available at all times, the remuneration would be the full amount of the annual allowance and the full amount of the special allowance. 30/ The special allowance is payable for every day on which a Member exercises his functions. 31/ In addition, the President receives a special allowance, 32/ and the Vice-President would receive the same for each day on which he/she acts as President. 33/

30/ Ibid., art. 18, para. 1.

31/ For computational purposes, following the standard practice, the number of working days in a calendar year is established at 250 days. This takes account of weekends and vacation time.

32/ Ibid., art. 18, para. 2.

33/ Ibid., art. 18, para. 3.

95. In order to minimize the cost implications during the initial phase, or at times when the Tribunal is not relatively active, it is proposed in the estimates annexed hereto that the amount of annual allowance should be kept at the basic level. Thus, those Members who are on "reserve" and not actively engaged in the business of the Tribunal would only receive a limited annual allowance (as an honorarium), which for the purpose of the estimates in the present working paper has been established at $25,000. They would not receive a special allowance or any other remuneration in the usual course, unless they are called upon to serve. Their total remuneration would only be the amount of the annual allowance.

96. For those Members who are in the "active" group and are called upon to serve, the special allowance for a year cannot exceed the annual allowance, 34/ and on the basis of the estimates in the present working paper, the maximum special allowance would also thus be $25,000.

97. Given the need for active Members to maintain a presence at or near the Seat of the Tribunal, the estimates propose that a supplementary subsistence allowance applicable to the Seat is to be paid. While the payment of the annual and special allowances are specified in the Statute, there is no provision in the Convention which would prevent the payment of such a subsistence allowance. Where active engagement and presence is required for a prolonged period, the maximum amount of subsistence allowance would be for 250 days 35/ in any calendar year. Utilizing the current level of subsistence payment under United Nations practice for Hamburg, the maximum amount of subsistence payment for any calendar year would therefore be computed at $62,500. 36/ Thus, the maximum remuneration that a Member would receive, including the maximum subsistence allowance, would be $116,000 per year. 37/ When the Tribunal is fully functional and active, the subsistence component would be incorporated into the basic annual and special allowances.

3. Structure and staff of the Registry

98. The structure and staffing of the Registry would, to a certain degree, depend on the level of activity of the Tribunal.

(a) Assuming that there would be only two active Members and a minimal workload, the structure of the Registry and corresponding staffing are reflected in annex IVA (scheme A) and the corresponding columns in annex V. The cost implications are in the corresponding column in annex VI.

34/ Ibid., art. 18, para. 1.

35/ Footnote 31, above.

36/ This computation is based on the current United Nations subsistence rate for Hamburg (approximately $250 per day) paid for a period of 250 days.

37/ This would bring the total remuneration of a Member who is present and functions throughout the year to a comparable level with the salaries of judges of other international courts and tribunals.

(b) Assuming that five Members are continuously present, with a moderate case-load, the corresponding staffing structure is to be found in annex IVB (scheme B) and the corresponding column in annex V. The cost implications are in the corresponding column in annex VI.

(c) Assuming that 11 Members are present at all times with an increased workload, the corresponding staffing structure is reflected in annex IVC (scheme C) and the corresponding column in annex V, with the cost implications in the corresponding column in annex VI.

99. When compared with the structure of the Registry for a fully functional initial establishment, the staffing requirements for a minimal initial establishment also reflect an approach whereby Professional and General Service staffing is based on the recruitment of multivalent staff who have combined capabilities. For instance, the Secretaries and the Judicial Support Service could have legal, political or technical expertise with linguistic capabilities as well. The General Service staff could also be required to have a combination of capabilities. This approach is consistent with the staffing of other international courts and tribunals, particularly the Registry of the International Court of Justice, which, with a limited number of staff, provides the range of services required. The resort to this approach has permitted further streamlining of staff requirements, as reflected in the attached estimates.

4. Languages

100. The Special Commission considered the alternatives and the implications of the Tribunal utilizing one, two or six official working languages. The relevant estimates, 38/ which provide a comparative evaluation of one, two or six official working languages, are to be found in annex III.

101. Consultations were held between interested delegations on the question of language to be used by the Tribunal. The Special Commission had before it two working papers. They were: Suggestions of the Latin American and Caribbean Group regarding languages of the Tribunal for the Law of the Sea (SCN.4/WP.12); and Proposal submitted by Austria, Belgium, Canada, Côte d'Ivoire, Czechoslovakia, France, Greece, India, Poland, Senegal and Switzerland (SCN.4/WP.13). Consideration was given to utilizing a limited number of languages, with the pleadings and judgments being later issued after the conclusion of the case or advisory opinion, in all of the other official languages of the United Nations. A final determination will be required as to the official working languages and as to the other languages in which the pleadings and judgments are to be issued.

38/ Refer SCN.4/WP.8/Add.1.

5. General

102. Where there is a fluctuation in the number of Members in active service for any period of time, or regarding the workload, the cost implications would not be directly proportional. The estimated costs are on an annual basis and are indicative for planning purposes. They are only applicable in accordance with the assumptions referred to. They would not hold if applied to shorter periods. Any increase in needs, even for short periods, would require increases at least in temporary assistance and contractual services.

6. Trends and directions

103. There was a general understanding that as and when the Tribunal was fully functional and had a substantial case-load, it may then warrant the full complement of Members being available at all times and full staffing of the Registry to meet the demands. However, there was widespread acceptance for phasing in the establishment of the Tribunal during the evolutionary stage, immediately following its establishment upon entry into force of the Convention. For this purpose the trend of the deliberations would lead to a preference for the third scheme contemplated, viz., the scheme whereby a complement of 11 Judges, fulfilling the quorum requirement, would be active and available during the initial phase while leaving open the possibility of expanding to a full-fledged Tribunal as and when necessary.

Annex IA

ORGANIZATIONAL CHART OF THE REGISTRY OF THE TRIBUNAL
(FOR TWO OFFICIAL WORKING LANGUAGES)

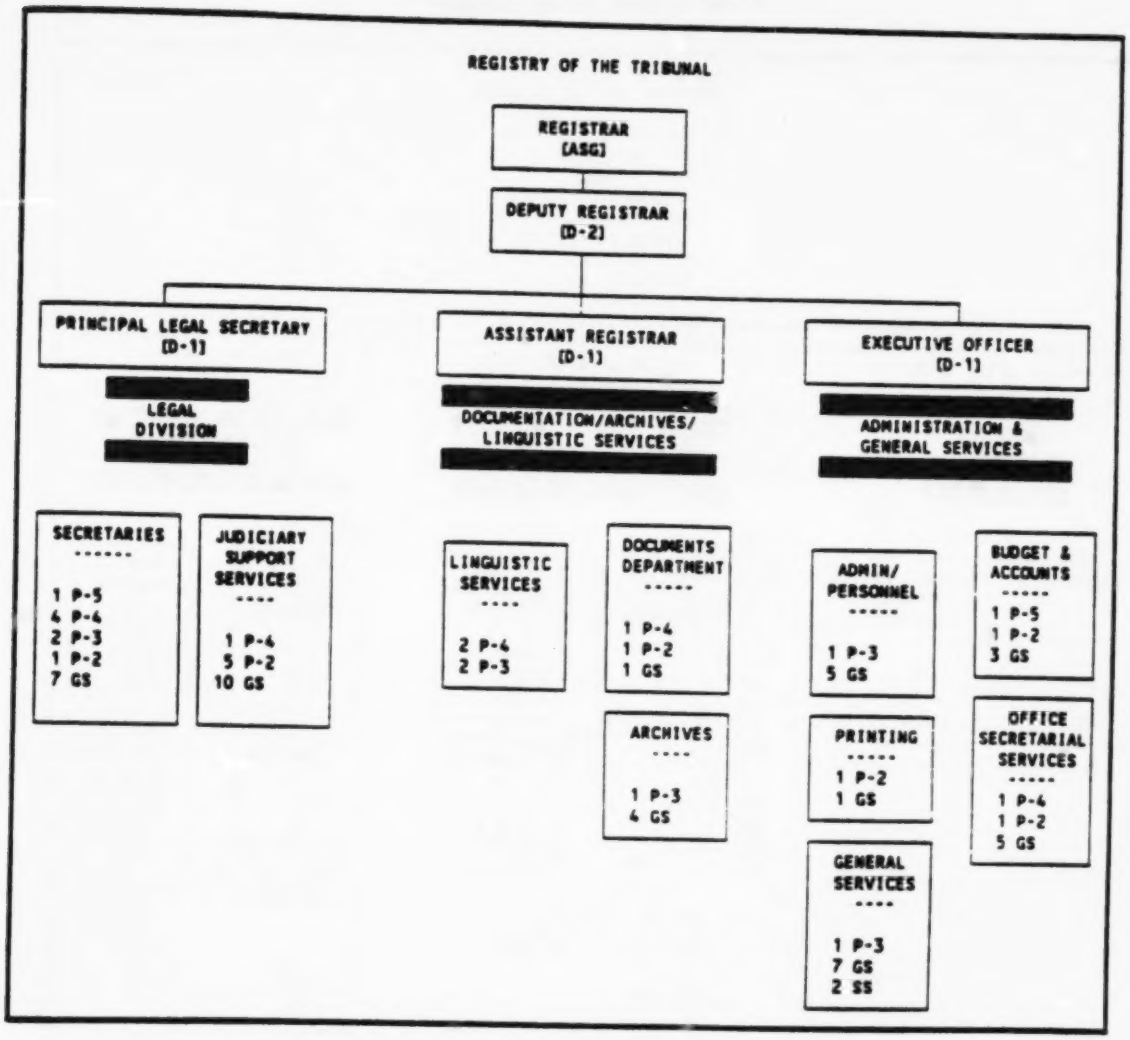

Table 1. Post Requirements

ASG	D-2	D-1	P-5	P-4	P-3	P-2/P-1	GS Princ. Level	GS Other Level	TOTAL
1	1	3	2	9	7	10	8	37	78

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Annex IB

ORGANIZATIONAL CHART OF THE REGISTRY OF THE TRIBUNAL
(FOR ONE OFFICIAL WORKING LANGUAGE)

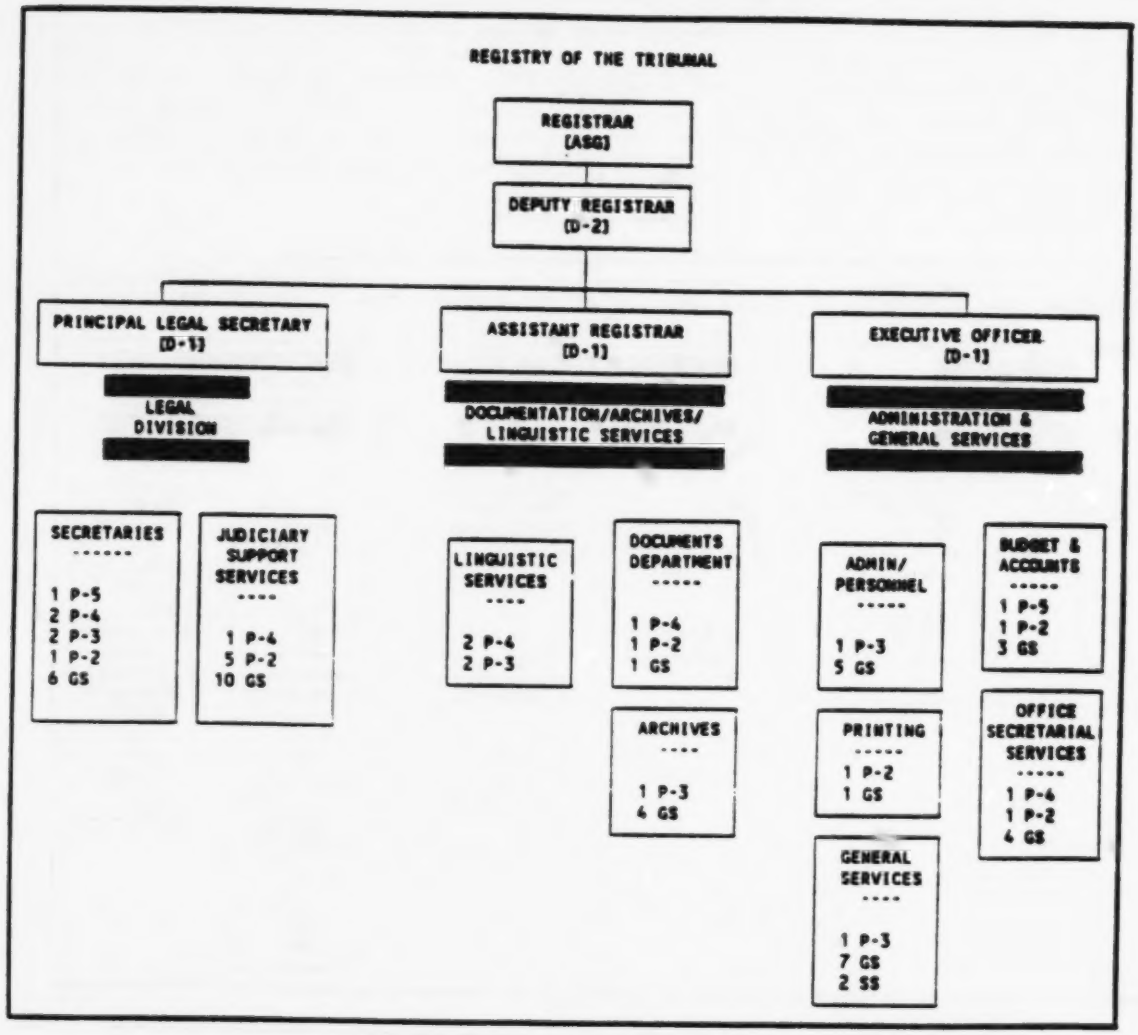

Table 1. Post Requirements
(For 1 official working language)

ASG	D-2	D-1	P-5	P-4	P-3	P-2/P-1	GS Princ. Level	GS Other Level	TOTAL
1	1	3	2	7	7	10	8	35	74

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Annex IC

ORGANIZATIONAL CHART OF THE REGISTRY OF THE TRIBUNAL
(FOR SIX OFFICIAL WORKING LANGUAGES)

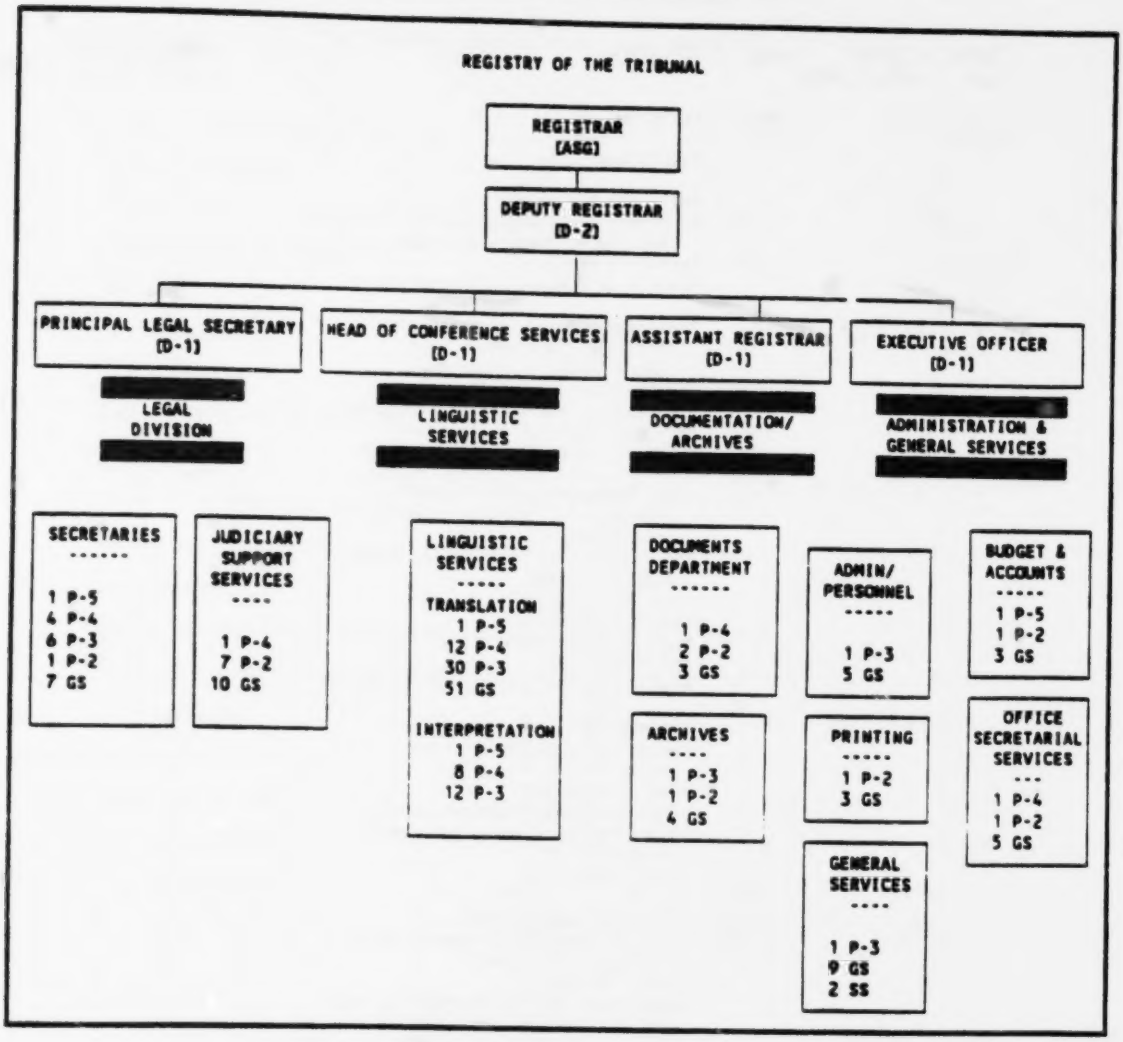

Table 1. Post Requirements

ASG	D-2	D-1	P-5	P-4	P-3	P-2/P-1	GS Princ. Level	GS Other Level	TOTAL
1	1	4	4	27	51	14	23	79	204

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Annex II

STAFFING STRUCTURE OF THE REGISTRY OF THE TRIBUNAL

Number of posts 1 lang.	2 lang.	6 lang.	Level	Functions	Number of posts 1 lang.	2 lang.	6 lang.
*	1	1	ASG	Registrar	1	1	1
1	1	1	D-2	Deputy Registrar	1	1	1
3	3	4	D-1	Assistant Registrar	1	1	1
				Principal Legal Secretary (Secretary, Rules Committee)	1	1	1
				Executive Officer	1	1	1
				Head of Conference Services*	0	0	1
2	2	4	P-5	Accountant/Establishment Officer (Secretary, Budgetary and Administrative Committee)	1	1	1
				Senior Secretary (Secretary, Relations and Public Information)	1	1	1
				Chief of Translation Section**	0	0	1
				Chief of Interpretation Section**	0	0	1
7	9	27	P-4	Head, Documents Dept./Librarian (Secretary, Library and Archives Committee)	1	1	1
				First Secretary (Secretary, Staff Appeals Board)	1	1	1
				First Secretaries*	1	3	3
				Special Assistant	1	1	1
				Revisers/Translators**	2	2	12
				Interpreters**	0	0	8
				Head of Office Secretarial Services	1	1	1
7	7	51	P-3	Secretaries	2	2	6
				Revisers/Translators/Précis Writers**	2	2	24
				Head of Archives	1	1	1
				Administrative/Personnel Officer	1	1	1
				Co-ordinator, General Services	1	1	1
				Interpreters**	0	0	12
				Terminologists**	0	0	6
10	10	14	P-2/P-1	Associate Secretaries	1	1	1
				Judiciary Secretaries/Researchers**	5	5	7
				Associate Librarian**	1	1	2
				Budget Officer	1	1	1
				Supervisor, Office Secretarial Serv.	1	1	1
				Head of Printing	1	1	1
				Associate Archives Officer**	0	0	1
43	45	102	GS	Principal level**	8	8	23
				Other levels* **	33	35	43
				Security Officers	2	2	2
				Sound Engineers**	0	0	2
				Typists for Conference Services**	0	0	31
74	78	204		TOTAL	74	78	204

* Additional post(s) for six official languages in comparison with two languages.
** Reduction in posts for one official language in comparison with two languages.

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Annex III

SUMMARY OF RECURRENT FINANCIAL IMPLICATIONS

(In thousands of United States dollars)

Objects of expenditure	Annual costs for 1 language*	Annual costs for 2 languages*	Annual costs for 6 languages
Established posts	3 197.3	3 362.7	8 995.4
Temporary assistance for meetings	260.0	260.0	680.0
General temporary assistance	78.0	78.0	204.0
Overtime	24.0	24.0	62.8
Temporary posts	566.2	566.2	1 480.8
Common staff costs	1 376.5	1 424.5	2 607.7
Representation allowances	3.6	3.6	3.6
Official travel of staff	39.0	39.0	39.0
External printing and binding	210.0	210.0	1 410.0**
Annual and special allowancess of Members	2 396.3	2 396.3	2 396.3
Rental and maintenance of premises	200.0	200.0	200.0
Rental and maintenance of equipment	48.0	48.0	125.5
Communications	90.0	90.0	235.4
Hospitality	5.0	5.0	5.0
Miscellaneous services	4.0	4.0	10.5
Supplies and materials	125.0	125.0	326.9
Furniture and equipment	50.0	50.0	130.8
Total	8 672.9	8 886.3	18 913.7

* These preliminary estimates are based on the assumption that the Tribunal will have no more than the specified number of working languages shown in the relevant column. However, the judgments and pleadings would later be published externally as unofficial translations in the other working languages of the United Nations.

** Estimates for external printing are tentative. These estimates may have to be revised depending on volume and external printing rates at the duty station.

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Annex IVA

ORGANIZATIONAL CHART OF THE REGISTRY OF THE TRIBUNAL

(SCHEME-A)

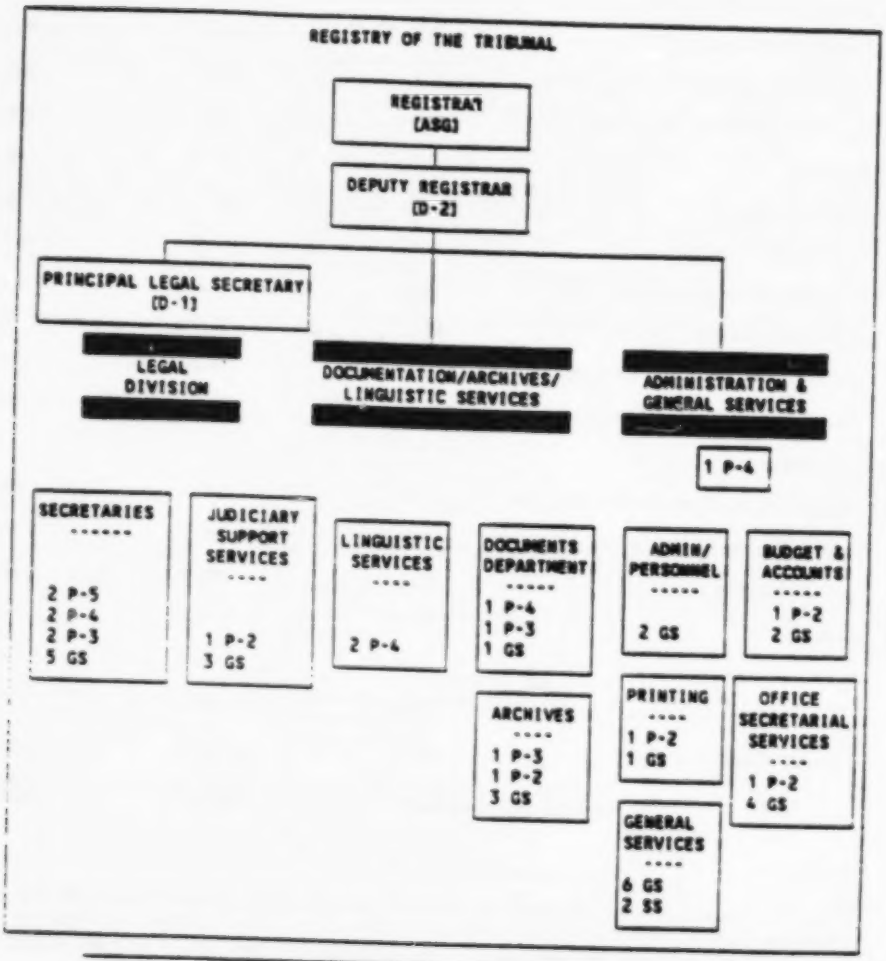

Table 1. Post Requirements

ASG	D-2	D-1	P-5	P-4	P-3	P-2/P-1	GS Princ. Level	Other Level	TOTAL
1	1	1	2	6	4	5	4	25	49

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Annex IV8

ORGANIZATIONAL CHART OF THE REGISTRY OF THE TRIBUNAL

(Scheme B)

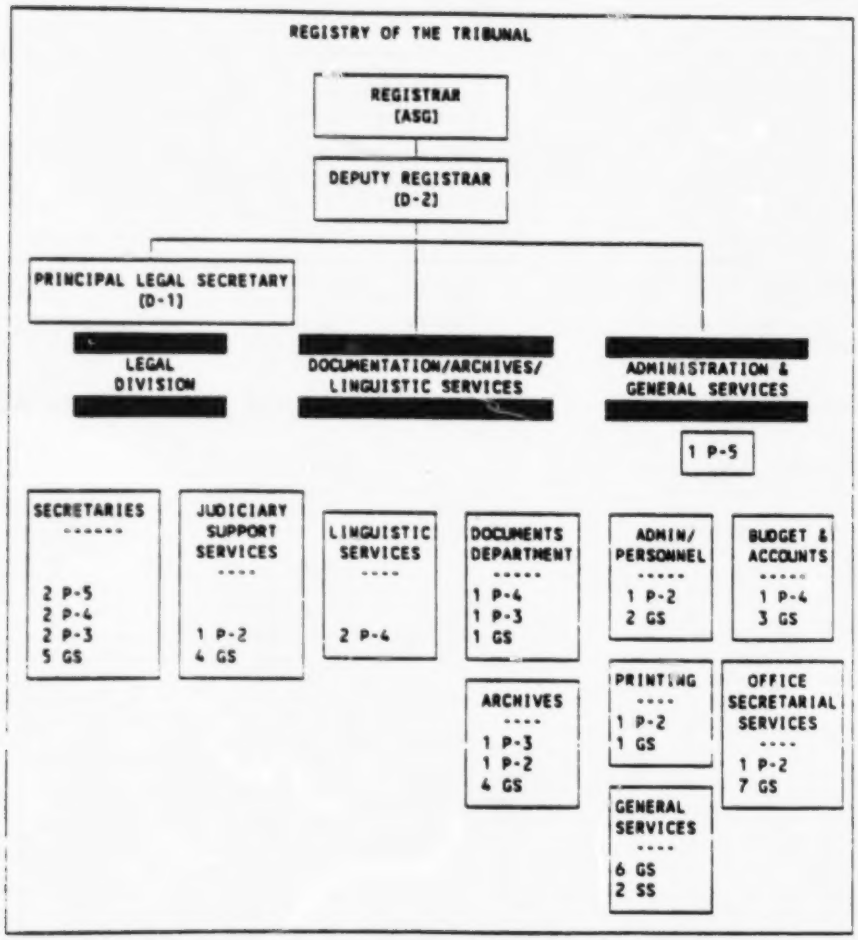

Table 1. Post Requirements

ASG	D-2	D-1	P-5	P-4	P-3	P-2/P-1	GS Princ. Level	GS Other Level	TOTAL
1	1	1	3	6	4	5	5	30	56

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Annex IVC

ORGANIZATIONAL CHART OF THE REGISTRY OF THE TRIBUNAL

(SCHEME C)

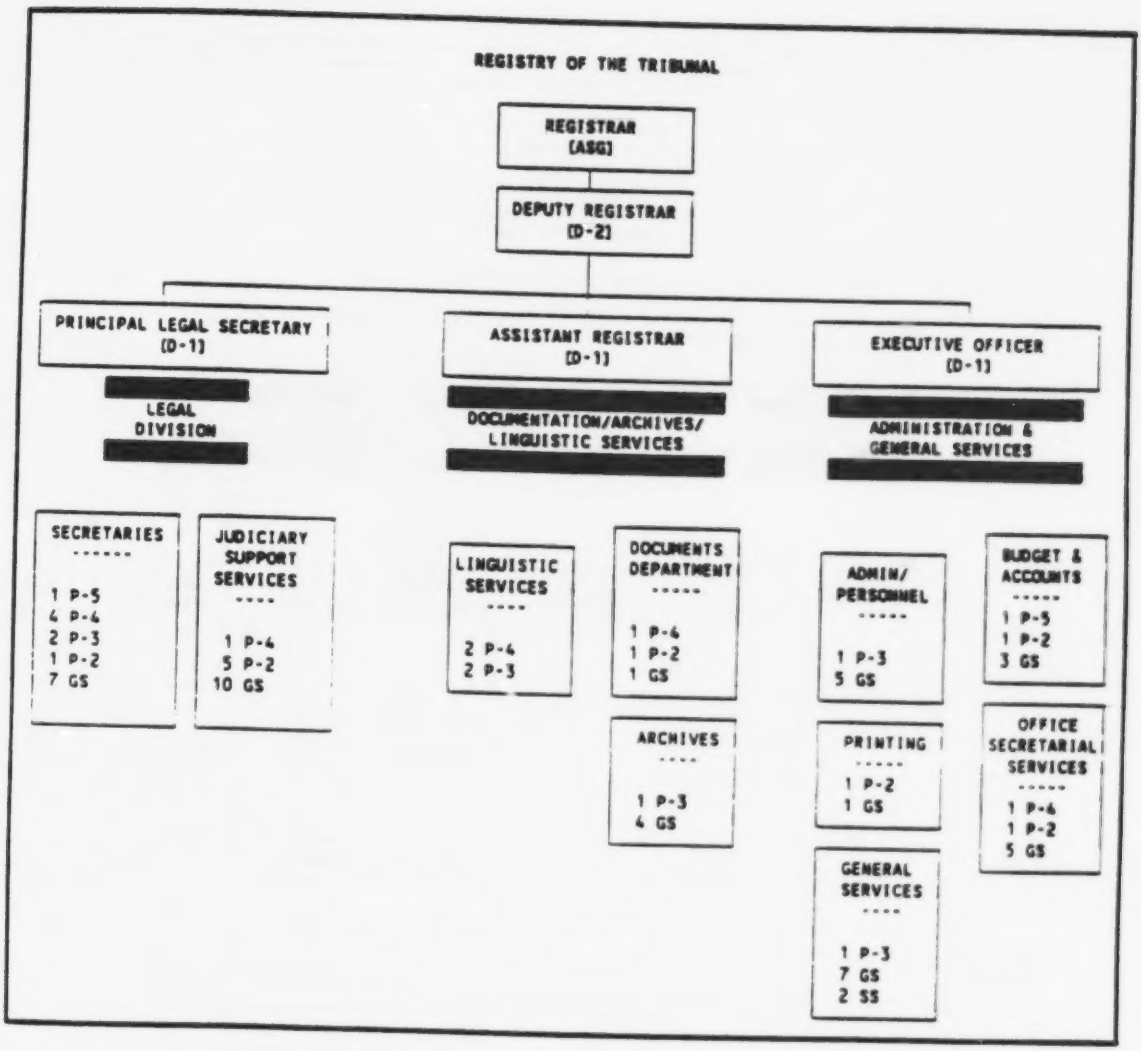

Table 1. Post Requirements

ASG	D-2	D-1	P-5	P-4	P-3	P-2/P-1	GS Princ. Level	GS Other Level	TOTAL
1	1	3	2	9	7	10	8	37	78

/...

Annex V

STAFFING STRUCTURE OF THE REGISTRY OF THE TRIBUNAL

Number of posts Schemes					Number of posts Schemes		
A	B	C	Level	Functions	A	B	C
1	1	1	ASG	Registrar	1	1	1
1	1	1	D-2	Deputy Registrar	1	1	1
1	1	3	D-1	Assistant Registrar	0	0	1
				Principal Legal Secretary (Secretary, Rules Committee)	1	1	1
				Executive Officer	0	0	1
2	3	2	P-5	Accountant/Establishment Officer (Secretary, Budgetary and Administrative Committee)	0	1	1
				Senior Secretary (Secretary, Public Relations)	1	1	1
				Senior Secretary	1	1	0
6	6	9	P-4	Accountant/Establishment Officer	1	1	0
				Head, Documents Dept./Librarian (Secretary, Library and Archives Committee)	1	1	1
				First Secretary (Secretary, Staff Appeals Board)	1	1	1
				First Secretaries	0	0	3
				Special Assistant	0	0	1
				Revisers/Translators	2	2	2
				Information Officer	1	1	0
				Head of Office Secretarial Services	0	0	1
4	4	7	P-3	Secretaries	1	1	2
				Special Assistant	1	1	0
				Revisers/Translators	0	0	2
				Head of Archives	1	1	1
				Head of Administration/Personnel	0	0	1
				Co-ordinator, General Services	0	0	1
				Librarian	1	1	0
5	5	10	P-2/P-1	Associate Secretary	0	0	1
				Judiciary Secretaries/Researchers	1	1	5
				Associate Librarian	0	0	1
				Associate Administrative/Budget Officer	1	1	1
				Head of Office Secretarial Services	1	1	1
				Head of Printing	1	1	1
				Associate Archives Officer	1	1	0
29	35	45	GS	Principal level	4	5	8
				Other levels	23	28	35
				Security Officers	2	2	2
49	56	78		TOTAL	49	56	78

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Annex VI

SUMMARY OF RECURRENT FINANCIAL IMPLICATIONS

(In thousands of United States dollars)

Objects of expenditure	Annual costs		
	Scheme A a/	Scheme B b/	Scheme C c/
Established posts	2 108.2	2 365.9	3 362.7
Temporary assistance for meetings	260.0	190.0	260.0
General temporary assistance	85.5	81.3	78.0
Overtime	40.0	35.0	24.0
Temporary posts	413.8	413.8	566.2
Common staff costs	767.7	1 168.1	1 625.5
Representation allowances	3.6	3.6	3.6
Official travel of staff	60.5	49.5	42.0
External printing and binding	210.0	210.0	210.0
Annual and special allowances of Members	955.0	1 133.5	1 574.5
Rental and maintenance of premises	(200.0)	(200.0)	(200.0) d/
Rental and maintenance of equipment	30.2	35.1	48.0
Communications	56.5	65.8	90.0
Hospitality	3.5	3.7	5.0
Miscellaneous services	2.5	2.9	4.0
Supplies and materials	78.5	91.4	125.0
Furniture and equipment	31.4	36.5	50.0
TOTAL	5 106.9	5 956.1	8 068.5

Note Data on costs of established posts, common staff costs, and representation allowance applicable for 1991 are based on the United Nations "Standard Costs Version 22/90" of May 1989, the latest published version available at the time. In the absence of data applicable to UN staff in Hamburg, the data on duty station Hague is used in the table.

a/ 2 Members present at seat, 19 Members hold themselves available

b/ 5 Members present at seat, 16 Members hold themselves available

c/ 11 Members present at seat, 10 Members hold themselves available

d/ Not included in total. In the event that no rental is involved, maintenance costs may be required.

LOS/PCN/SCN.4/WP.16/Add.7*
18 October 1993

ORIGINAL: ENGLISH

PREPARATORY COMMISSION FOR THE
INTERNATIONAL SEABED AUTHORITY
AND FOR THE INTERNATIONAL
TRIBUNAL FOR THE LAW OF THE SEA
Special Commission 4

PROVISIONAL REPORT OF SPECIAL COMMISSION 4

(DRAFT REPORT OF THE PREPARATORY COMMISSION UNDER PARAGRAPH 10 OF RESOLUTION I CONTAINING RECOMMENDATIONS FOR SUBMISSION TO THE MEETING OF STATES PARTIES TO BE CONVENED IN ACCORDANCE WITH ANNEX VI, ARTICLE 4, OF THE CONVENTION, REGARDING PRACTICAL ARRANGEMENTS FOR THE ESTABLISHMENT OF THE INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA)

Addendum

REPORT WITH RECOMMENDATIONS CONCERNING THE INITIAL FINANCING AND BUDGET OF THE INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA

(Prepared by the Secretariat)

CONTENTS

	Paragraphs	Page
INTRODUCTORY NOTE	1 - 2	3
I. GENERAL	3 - 6	3
II. GOVERNING PRINCIPLES	7 - 9	4

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* This working paper also constitutes addendum 7 to document LOS/PCN/SCN.4/WP.15 which was not previously issued as a separate document.

CONTENTS (continued)

		Paragraphs	Page
III.	FINANCIAL ARRANGEMENTS	10 - 13	5
IV.	PROVISIONAL ARRANGEMENTS	14 - 17	6
V.	WORKING CAPITAL FUND	18 - 20	7
VI.	ALTERNATIVE SOURCES OF INITIAL FUNDING	21 - 22	7
VII.	MEETING OF STATES PARTIES	23 - 24	8

INTRODUCTORY NOTE

1. The initial financing of the International Tribunal for the Law of the Sea and the formulation of its first budget were considered by Special Commission 4 on the basis of the working paper presented by the Secretariat (LOS/PCN/SCN.4/WP.11). The summary of the discussions of the Special Commission on the subject are contained in the Chairman's summary of discussions (LOS/PCN/SCN.4/L.18).

2. The Special Commission decided that since it was of importance, some clear recommendations should be formulated with regard to the initial financing and budget of the Tribunal in order to facilitate the decision-making thereon by the Meeting of States Parties. The Special Commission thus mandated the Secretariat to prepare a "Report with recommendations concerning the initial financing and budget of the Tribunal", taking into consideration the deliberations of the Special Commission in this regard. The present working paper constitutes the response thereto.

I. GENERAL

3. The Special Commission considered the precedent of the United Nations and the practice followed by its Preparatory Commission, and also the manner in which other new international institutions or bodies have been established by the United Nations. In accordance with the deliberations of the Special Commission, the conclusion was drawn that historic precedent should also be considered, particularly as it related to the establishment, as an organ of the League of Nations, of the Permanent Court of International Justice in The Hague, since it was the most appropriate experience for the creation ab initio of an international judicial body of a global character. Consideration was also given to the experience of the International Court of Justice under the Charter of the United Nations.

4. It was the understanding of the Special Commission that the recommendations should take into account that at the outset the workload would probably be light and consequently there should be provision for the phasing in of the Tribunal. Account should be taken of the fact that initially there may not be a need for the full complement of judges in view of the resulting financial implications. This is reflected in section VII below.

5. It was also the understanding of the Special Commission that fundamental to the nature of the International Tribunal and its central role in the settlement of the disputes under the Convention is that it should be sui generis, stand alone, and be financially autonomous. In that regard the Tribunal is different from the International Court of Justice, which would otherwise be the principal judicial institution of reference with regard to the different aspects of its establishment; hence also the difficulty in formulating original recommendation as to the financing and budget of the Tribunal.

6. As a matter of convenience, it was considered appropriate to divide the budgetary recommendations into two sections, following the pattern of the working paper (LOS/PCN/SCN.4/WP.11). The two sections would respectively be:

(1) requirements for the initial establishment, both preliminary and provisional, to serve during the early functioning; and (2) long-term requirements which would provide for the appropriation of finances and the permanent arrangements therefor. This would be consistent with the precedent of the Preparatory Commission for the United Nations. It would also be consistent with the experience of the League of Nations.

II. GOVERNING PRINCIPLES

7. In the financing of the Tribunal, the governing principles would be financial responsibility, fiscal restraint, rational policies and proper administration. These are general guidelines that should constitute the framework of any scheme to be established by the Meeting of States Parties.

8. At all stages, whether during the initial phase, in transition, or when the Tribunal is fully operational, it was understood that certain factors would have to be taken into account. These would include the following:

(a) The financial system should promote the most efficient and economical administration;

(b) Financial controls should not in any way influence or affect the essential independence and impartiality of this judicial body;

(c) Financial factors should not be permitted to frustrate or hinder the free recourse to the Tribunal by all states, whether developed or developing, and by other entities that have access to it;

(d) Parties before the Tribunal should be on an equal footing.

9. In the initial establishment of the Tribunal it was broadly accepted that:

(a) The provisional arrangements should, to the extent possible, minimize the initial costs to States Parties to the Convention, taking into account that the work of the Tribunal will evolve over a number of years;

(b) The development of the Tribunal into a full-scale judicial body should be phased in;

(c) The phasing in should be on the basis of the anticipated and growing workload during the initial years. 1/

1/ See the Chairman's summary of discussions on administrative arrangements, structure and financial implications of the International Tribunal for the Law of the Sea (LOS/PCN/SCN.4/L.14); see also the working paper on administrative arrangements, structure and financial implications of the International Tribunal for the Law of the Sea (LOS/PCN/SCN.4/WP.8); as well as that on a scheme to phase in the establishment of the International Tribunal for the Law of the Sea (LOS/PCN/SCN.4/WP.8/Add.2).

It was also understood that financial implications would be greater as the case-load increases.

III. FINANCIAL ARRANGEMENTS

Sources of financing the Tribunal

10. When providing for the establishment of the Tribunal, the Convention 2/ states that the expenses of the Tribunal shall be borne by the States Parties and the International Seabed Authority and also by the users of the Tribunal, other than States Parties. Contributions would be made primarily by States Parties and the Authority. With regard to the contribution by States Parties, the Authority, and by entities other than States Parties, there is no clear guidance in the Convention with regard to how to assess and quantify their contributions to the costs of the Tribunal.

11. Apportionment of contributions (scale of assessments) - A determination needs to be made as to the manner in which the financing of the Tribunal would be apportioned between States Parties, the Authority and parties to proceedings before the Tribunal. A scheme for apportionment or a scale of assessments would have to be adopted. The determinations could be based on the capacity of each to pay, taking into account the established criteria and the international practice in this regard.

12. The experience of the United Nations was that the expenses were apportioned among Member States according to the capacity to pay taking into account: (a) comparative income per head of population; (b) temporary dislocation of national economies arising out of the Second World War; and (c) the ability of Members to secure foreign currency.

Budgetary control and administration

13. The Meeting of States Parties needs to conclude on several basic arrangements for the Tribunal. In doing so it may be expected to follow precedent and rely on the experience of the United Nations system:

(a) Periodicity of budget. The budget of the Tribunal should be on an annual basis initially, with the possibility of revision or change to a biennial budget if considered appropriate. This takes into account that during the initial phasing in, an annual budget would permit greater flexibility and would require less forecasting and long-term assumptions. This follows the experience of the United Nations;

2/ Annex VI, art. 19.

(b) Preparation of budget. The Registrar, as chief administrative officer, should formulate and present the initial budget of the Tribunal to the Meeting of States Parties, and thereafter as may be determined by the Meeting. Such an arrangement is consistent with the practice of the United Nations where the Secretary-General, as its chief administrative officer, fulfils a corresponding function;

(c) Budget review process. The Commission did not arrive at any final conclusion. However, it examined the alternatives as to the budget review process and the composition of the body that would be given the competence to function as a review mechanism. It left open the option of arriving at an arrangement whereby the Advisory Committee on Administrative and Budgetary Questions (ACABQ) of the General Assembly of the United Nations could serve as an independent review body. Any financial review bodies established for the International Seabed Authority were not considered appropriate, inter alia, since the International Seabed Authority would be a contributor to the budget of the Tribunal; 3/

(d) Operating currency. In determining which would be the currency in which the Tribunal will operate, consideration should be given to the fact that the currency of the host country of the headquarters has in practice been used in the case of the United Nations.

IV. PROVISIONAL ARRANGEMENTS

14. Pending the review and adoption of the first annual budget of the Tribunal, it was concluded that a means of financing the interim expenses and providing for an interim mechanism to control the provisional budget and controlling the interim expenses needed to be determined. This appears necessary in view of the anticipated delay in the approval of a scale of assessments for apportioning expenses between States Parties and the International Seabed Authority, and in determining the methodology to be applied. In this context, following international practice, the adoption on an interim basis of an existing scale of assessments such as that of the United Nations was considered an appropriate option. Such an arrangement would necessarily be without prejudice to the adoption later of a scale or assessments specific to the Tribunal.

15. The provisional period for which it would be necessary to make financial arrangements through the adoption of a provisional budget and the establishment of a working capital fund should cover the whole of the first financial year with the possibility of extensions to the next financial period pending renewal, revision or supersedence of the existing arrangement.

16. An important corollary to the provisional arrangements for financing is the formulation of draft financial regulations, which would incorporate the terms of the provisional budget and the working capital fund.

3/ Annex VI, art. 19, of the Convention.

17. It is understood from experience (United Nations) that there would be a short period before a working capital fund could be established and in the interim the expenses would have to be financed by some other means.

V. WORKING CAPITAL FUND

18. The establishment of a working capital fund is foreseen in order to cover the initial period, before a scale of assessments is approved and assessed contributions paid in. This should also cover incidental costs resulting from the Meeting of States Parties.

19. Given the necessity to maintain a financial reserve for the administration of this Tribunal, the arrangement for a working capital fund should be continued, in addition to the general fund established. This has been the experience of international organizations, and particularly so in the case of the United Nations.

20. The working capital fund for a new international institution may be made up of advances from States Parties. These advances could be reimbursable or non-reimbursable, or eventually set off against assessed contributions. The contributions to the working capital fund were not credited to the assessed contributions of Member States in the case of the United Nations. There has also been a recent experience where the working capital fund was very substantially contributed to by the host country, which also provided host facilities. Another alternative in the existing experience has been the provision of a loan from the United Nations.

VI. ALTERNATIVE SOURCES OF INITIAL FUNDING

21. The Special Commission reviewed the alternatives as regards initial financing of the Tribunal. No conclusion was drawn as regards apportioning expenses among the States Parties. The option of advanced payment against contributions to be assessed in the future was considered one possible source of initial funding. Alternative means of funding would include:

(a) A reimbursable or non-reimbursable loan from the United Nations;

(b) Advances against future contributions from States that are or will be States Parties;

(c) Reimbursable or non-reimbursable contributions by States that have taken an initiative in establishing the Tribunal or by the host country.

22. In the case of the United Nations, Governments that made advances against future contributions later treated those advances as non-reimbursable loans and did not seek credit for these payments against their assessed contributions. Some delegations were of the view that an individual State should not be responsible for the initial financing of the Tribunal since it was intended to be an independent and neutral institution. In that view, the example of the United Nations University where, as an alternative source of initial funding, the host country provided a substantial endowment amounting to $100 million, was

not considered appropriate. Other delegations considered that experience as an appropriate example of an alternative source of financing the Tribunal. The Commission concluded that, although the United Nations University is different from the Tribunal, it nevertheless constitutes a useful example.

VII. MEETING OF STATES PARTIES

Considerations in decision-making

23. In its decision-making, it would be appropriate for the Meeting of States Parties to take into consideration the following factors:

(a) Physical facilities would be made available to the Tribunal by the Government of Germany; 4/

(b) Operating costs should be reduced in order to achieve maximum economy and the highest possible level of efficiency (see LOS/PCN/SCN.4/WP.8 and Add.1 and 2; LOS/PCN/SCN.4/WP.15/Add.6);

(c) The Tribunal is independent and would not therefore enjoy shared support services and facilities, unless the Meeting of States Parties decides otherwise;

(d) A cost-effective institution should be achieved through: the scheme to have 11 members of the Tribunal available at the initial stage (instead of all 21 judges) and the establishment of a Registry that is not full-fledged with the postponement of appointments to highly paid level posts; and the use by the Tribunal of only two official working languages.

Premises occupied by the Tribunal

24. The Meeting of States Parties would have to consider and adopt any arrangements made between the Tribunal and the host country. This would then enable it to consider the expenses of the premises to be occupied by the Tribunal. It should be taken into consideration that some of the costs might be borne by the Government of Germany (providing basic fixtures and furniture for the buildings) but that some requirements and facilities are necessary to supplement the offer of Germany and that their costs would be the responsibility of the Tribunal.

4/ See communications from the Government of Germany (LOS/PCN/80 and LOS/PCN/106 and subsequent reports (LOS/PCN/SCN.4/L.6, L.8, L.12, L.16 and L.16/Add.1)). The Government of Germany would provide the buildings (see LOS/PCN/SCN.4/WP.15). This does not include provision for the residence of the President of the Tribunal, who would reside at the seat of the Tribunal.